





Provisional Measures Report

DUMPING INVESTIGATION

Hollow Steel Sections from China and Malaysia

Trade (Anti-dumping and Countervailing Duties) Act 1988

July 2018

NON-CONFIDENTIAL

ISBN (online) 978-1-98-857004-4

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Abbreviations and Acronyms

This report contains the following abbreviations and acronyms:

Acronym	Meaning
Act, the	The <i>Trade (Anti-dumping and Countervailing Duties) Act 1988</i>
AFA	Adverse facts available
AD Agreement, the	The WTO Agreement on Implementation of Article VI of the GATT
ADC	Anti-Dumping Commission, the Australian investigating authority
CBSA	Canadian Border Service Agency
China	People's Republic of China
CHS	Circular hollow sections
CIF	Cost, Insurance, Freight
Customs	New Zealand Customs Service
EBIT	Earnings Before Interest and Taxes
FIS	Free into store
FY	Financial Year
GATT 1994	General Agreement on Tariffs and Trade 1994
GOC	Government of China
HDG	Hot-dipped galvanised
HRC	Hot rolled coil
HSS	Hollow steel sections
ILG	In-line galvanised
MBIE	Ministry of Business, Innovation and Employment
MPa	MegaPascals (measurement of pressure/stress)
MT	Metric ton (tonne)
NZ	New Zealand
NZ Steel	New Zealand Steel Limited
NZD	New Zealand Dollar
Rebar	Steel reinforcing bar and coil
RHS	Rectangular hollow section
ROI	Return on investment
SIMA	Canadian Special Import Measures Act 1985
Statistics NZ	Statistics New Zealand
USD	United States Dollar

VFD	Value for Duty
WTO	World Trade Organisation

Confidentiality of Information

In a number of instances, information in this report, including figures in the tables, is considered confidential because the release of this information would be of significant competitive advantage to a competitor or its release would otherwise have a significant adverse impact on a party.

In these instances, the information has been redacted or where possible has been summarised in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. For example, in tables, where possible, actual figures have been replaced by figures showing indexed or percentage changes from the previous period. Shading has been used to show where this occurs.

Where it has not been possible to show summaries in this manner, the information has not been susceptible of summary because to do so would unnecessarily expose the provider of the information to commercial risk.

EXECUTIVE SUMMARY

MBIE has reviewed the level and effect of dumping of HSS and concludes that provisional measures on imports from Malaysia are necessary to prevent material injury during the remaining period of investigation.

This report provides the basis for the Minister of Commerce and Consumer Affairs to make a decision under section 16 of the Trade (Anti-dumping and Countervailing Duties) Act 1988 (the Act) as to whether he has reasonable cause to believe, in relation to the importation or intended importation of hollow steel sections (HSS) into New Zealand from China and Malaysia, that the goods are dumped and by reason thereof material injury to an industry has been or is being caused, and whether he is satisfied that provisional anti-dumping measures are necessary to prevent material injury being caused during the period of investigation.

On the basis of the provisional conclusions on the level of dumping, the Ministry of Business, Innovation and Employment (MBIE) considers that there is no dumping of HSS from China, but there are grounds for the imposition of provisional measures on HSS from Malaysia in order to prevent material injury being caused by dumped imports during the remaining period of investigation. MBIE's recommendation to the Minister reflects this conclusion.

MBIE initiated an investigation on the basis of an application from NZ Steel, which requested that provisional measures be imposed.

On 9 April 2018 the MBIE started (initiated) an investigation under the Act into HSS from the People's Republic of China (China) and Malaysia, following the receipt of an application for a dumping investigation from NZ Steel Ltd (NZ Steel). The applicant claimed that HSS from China and Malaysia is being dumped and that dumped imports are causing material injury to NZ Steel. An investigation into NZ Steel's claims that subsidised imports of HSS from China are causing material injury was initiated on the same date.

NZ Steel requested that provisional measures be imposed on the allegedly dumped imports during the remaining period of the investigation.

The subject goods are certain specifications of HSS, categorised by finish types and size.

The subject goods as identified by NZ Steel are:

Certain electric resistance welded pipe and tube made of carbon steel, comprising circular and noncircular hollow sections, collectively referred to as hollow steel sections (HSS).

The finish types of the goods are galvanised including in-line galvanised, pre-galvanised or hot-dipped galvanised (HDG); or non-galvanised, including but not restricted to, painted, black,

lacquered or oiled finishes.

The sizes of the goods are: circular products with a nominal diameter up to and including 150mm; or oval, square and rectangular products with a perimeter up to and including 520mm.

The goods may also be categorised according to minimum yield strength, the most common classification being 250 and 350 MPa¹.

MBIE is reviewing the goods covered by the investigation to ensure that there is a proper match with the goods produced by the New Zealand industry.

MBIE is undertaking an analysis to ensure that the imported goods covered by the investigation, the subject goods, are a match with the like goods produced by the New Zealand industry. The analysis is not yet completed but its outcome will inform the Essential Facts and Conclusions Report.

The New Zealand industry comprises NZ Steel and other producers.

MBIE is satisfied that NZ Steel and two other smaller producers make up the New Zealand industry producing like goods.

The Act sets out the conditions for the imposition of provisional measures.

Under the Act the imposition of provisional measures requires that:

- at least sixty days have passed from the initiation of the investigation
- the Minister has reasonable cause to believe that the goods are dumped
- the Minister has reasonable cause to believe that by reason of the dumping the industry is suffering material injury
- the Minister is satisfied that provisional measures are necessary to prevent material injury being caused during the remaining period of investigation.

The information used in this Report is based on the application, responses to

This report and its conclusions are based on information available to MBIE in the period up to and including 7 June 2018, being sixty days from the date of initiation of the investigation. Subsequent

¹ MegaPascals measure the intensity of pressure (stress).

questionnaires, information from other jurisdictions, WTO documents, and other information obtained by MBIE.

information obtained by MBIE or made available to it, including through any additional submissions by interested parties, could provide a basis to modify provisional conclusions during the remaining period of investigation.

Information available to MBIE includes the NZ Steel application; information received from identified importers, intermediary exporters, Chinese manufacturers, and Malaysian manufacturers; information from counterpart investigating authorities in other jurisdictions; World Trade Organisation (WTO) dispute findings; and other information obtained by MBIE.

Where sufficient information is not available, the export price or normal value can be determined on the basis of the information available that is considered to be reliable.

Section 6 of the Act provides that where the chief executive is satisfied that sufficient information has not been furnished or is not available to enable the export price or the normal value of the goods to be ascertained for the purposes of the Act, the export price or the normal value shall be such amount as is determined by the chief executive having regard to all available information. The chief executive may disregard any information considered to be unreliable. This reflects provisions of the WTO Agreement on the Implementation of Article 6 of the GATT 1994 (the AD Agreement).

The assessment of dumping is carried out according to the Act and the AD Agreement.

The basis for determining the existence and amount of any dumping is governed by the provisions of the Act and the AD Agreement, and is guided by findings in WTO dispute settlement proceedings.

A particular issue in the investigation of dumping of goods from China by other jurisdictions is their treatment of China as a non-market economy and their conclusions as to the extent of GOC control over prices of the subject goods.

A particular issue arising in the investigation of dumping is the issue of the extent to which the Government of China (GOC) exercises meaningful control over the economy, including the steel industry, and in particular its control over prices. New Zealand recognises that China is a market economy, and the approach adopted by MBIE reflects that position. This report includes a summary of the considerations behind MBIE's approach, and explains the basis for reaching different conclusions from those of other authorities.

The investigation of dumping is based on information relating to a sample of Chinese

MBIE identified a sample of the four Chinese manufacturers responsible for around 86 per cent of exports to New Zealand in 2017, and a single Malaysian manufacturer. MBIE has assessed the alleged dumping on the basis of the information provided in

manufacturers responsible for 86 per cent of exports to New Zealand in 2017, and the single Malaysian manufacturer.

the application, questionnaire responses, investigations undertaken by authorities in other jurisdictions, and other information available to or identified by MBIE.

The provisional conclusion regarding the level of dumping established to this point in the investigation is that imports from China are not dumped, but imports from Malaysia are dumped.

On the basis of the analysis undertaken by MBIE, which takes into account the best information available to this point in the investigation, the provisional conclusion is that there is no dumping of HSS from China, while for HSS from Malaysia, the weighted average margin of dumping that can reasonably be identified is 11.4 per cent.

MBIE has assessed the volume and price effects of the dumping of HSS from Malaysia, and the consequent impact on the domestic industry, and has concluded that the imposition of provisional measures is necessary to prevent material injury being caused during the period of investigation.

MBIE's injury investigation has examined the volume and price effects attributable to dumped imports of HSS from Malaysia, and has assessed the consequent impact on the domestic industry in accordance with the factors identified in the Act. MBIE concludes that there has been a consequent impact on NZ Steel in relation to a number of injury factors arising from the price effects of allegedly dumped imports of HSS from Malaysia. These injury factors include a decline in sales volume and sales revenue, a significant decline in profit and return on investments, and a negative effect on cash flow. These findings lead to the conclusion that provisional measures are necessary to prevent injury being caused to the domestic industry during the remaining period of the investigation.

The next stage of the investigation is the release, by 5 September, of the report on the essential facts and conclusions likely to form the basis for the final determination.

The next stage of the investigation is the preparation and circulation to interested parties by 5 September 2018 of the report on the essential facts and conclusions that will likely form the basis for the final determination.

The final determination, to be made by 5 October 2018, will finally establish whether or not the subject goods are dumped and by reason thereof causing material injury to the industry.

1. Introduction

1.1 Purpose

1. On 6 December 2017 MBIE accepted a properly documented application from NZ Steel, alleging that HSS from China and Malaysia is being dumped and by reason thereof causing material injury to the New Zealand industry.
2. On 9 April 2018, the chief executive initiated an investigation pursuant to section 10 of the Act, being satisfied that for the purpose of initiation the industry had provided sufficient evidence to support its application. This included evidence which suggested that:
 - HSS from China and Malaysia was being dumped, and
 - material injury to the New Zealand industry was being caused by dumped goods imported from China and Malaysia.
3. The investigation is carried out according to the requirements of the Act and the AD Agreement, bearing in mind that section 1A of the Act describes its purpose as “to enable New Zealand to apply anti-dumping and countervailing duties in accordance with its obligations as a party to the WTO Agreement.”² Where the Act is silent, or its interpretation and that of the SCM Agreement requires context, WTO dispute settlement findings provide guidance.
4. This report provides a basis for the recommendation to the Minister on the provisional measures determination under section 16 of the Act, that in relation to the importation or intended importation of goods into New Zealand, there is reasonable cause to believe that the goods are dumped and by reason thereof material injury to an industry has been or is being caused, and that provisional measures are necessary to prevent material injury being caused during the period of investigation.

1.2 Grounds for the Application

5. NZ Steel claimed that the alleged dumping of HSS from China and Malaysia is causing the company material injury through:
 - price undercutting
 - price depression
 - price suppression

² The Agreement establishing the World Trade Organisation adopted at Marrakesh on 15 April 1994.

resulting in:

- adverse consequences upon sales
 - adverse consequences upon profit, both per unit (e.g. EBIT³/tonne) and overall (e.g. EBIT)
 - adverse consequences upon return on investment
 - adverse consequences upon cashflow.
6. NZ Steel stated in its application that the material injury resulting from the importation of allegedly dumped HSS commenced in 2012.

1.3 Provisional Measures

7. NZ Steel requested that provisional anti-dumping duties be imposed in order to prevent material injury being caused to the domestic industry during the period of investigation.
8. This Provisional Measures Report (Report) is based on information available to MBIE to 7 June 2018. Where sufficient information has not been furnished, or is not available to enable MBIE to ascertain the amount of the dumping, the available information considered to be reliable has provided the basis for a determination of the amount of the dumping to be taken into account in considering whether or not provisional measures should be imposed. In terms of the AD Agreement, conclusions have been drawn on the basis of the best information available.

New Zealand Legislation

9. Section 16(1) of the Act provides as follows:

If, at any time after 60 days from the date on which an investigation has been initiated by the chief executive under section 10 (not being an investigation that has been terminated under section 11),—

(a) the Minister has reasonable cause to believe, in relation to the importation or intended importation of goods into New Zealand, that—

(i) the goods are being dumped or subsidised; and

(ii) by reason thereof material injury to an industry has been or is being caused or is threatened or the establishment of an industry has been or is being materially retarded; and

(b) the Minister is satisfied that action under this section is necessary to prevent material injury being caused during the period of investigation,—

the Minister may, by notice, give a provisional direction that payment of duty in respect of the goods shall be secured in accordance with sections 156 and 157 of the Customs and Excise Act 1996, except that the rate or amount of duty to be

³ Earnings before interest and taxation (EBIT).

secured shall not exceed the difference between the export price of the goods and their normal value, or the amount of the subsidy, as the case may be.

Residential Building Material

10. Section 14AA of the Act provides for the temporary suspension of anti-dumping duties on residential building material from 1 June 2014 to 30 June 2019 (the specified period). The Act requires that no new anti-dumping duty, including provisional measures, be applied during the specified period. Section 5(3) provides:

If the Minister notifies a rate or amount of anti-dumping duty on any residential building material during the specified period, the new duty is imposed and takes effect on and from 1 July 2019.

11. The temporary suspension of anti-dumping duties, accompanied by the temporary introduction of tariff concessions on a wide range of building materials, is in place to “remove a cost on the importation of building materials, which will promote competition in the residential construction sector and ultimately lower the cost of building new homes”⁴. The suspension of anti-dumping duties was also implemented in the context of the Canterbury post-earthquake rebuild and a need to increase residential construction, particularly in Auckland.

12. Section 3(1) of the Act defines “building material” and “residential building material” as follows:

building material—

- (a) *means any structural or non-structural component and assembly incorporated into, associated with, or capable of being incorporated into or associated with a building*
- (b) *includes. . .[a non-exhaustive list is provided of products that are included or excluded from the definition]*

residential building material means any building material that is capable of being incorporated into or associated with a residential dwelling (regardless of whether it is also capable of being incorporated into or associated with commercial premises).

13. The Act provides a non-exhaustive list of materials that are included within or excluded from the definition. Materials that are included are: roofing, roofing underlay, flashing, cladding, building wrap, rainwater systems, trusses, framing and framing elements, supporting beams, partitioning, plasterboard and other internal linings, architraves, and other trim, windows, doors, and insulation; sanitaryware; pipes, tubing, pipe fittings, tapware, hot water storage systems, hot water heating systems, and other plumbing

⁴ <https://www.beehive.govt.nz/release/anti-dumping-and-countervailing-duties-bill-passes-final-reading>

fixtures; electrical material other than heating materials and appliances; fixed cabinetry, bench tops, and splashbacks; sinks, hand basins, and washbasins; paint and varnish; reinforcing steel bar and coil; reinforcing steel mesh; cement; adhesives and sealants; nails, screws, nailplates, and hinges; locksets, passage sets, handles, door stops, and other builders hardware .

14. NZ Steel has submitted that it “considers that the goods covered by this application are not goods of a kind typically used in residential construction.” NZ Steel listed a wide range of uses for HSS: air compressor handles, air conditioning components, automotive and boat trailers, bus and truck skeletons, framing and ancillary mounts, child playground equipment (e.g. trampoline guards, frames and legs), communication and TV aerial supports, cowshed equipment, equipment and furniture frames, fencing posts, rails, bracing and stays, flagpoles, gantries, gates and agricultural plant and equipment, general manufacturing, glass-house components, hand trucks and dollies, industrial and safety guarding and rails, irrigation componentry, lawnmower handles, light engineering structures, lighting and electric pole extensions, livestock handling equipment (drafting yards), mechanical and industrial equipment, outdoor furniture, railway electrification arms, scaffolding and scaffolding systems, security camera supports, service bridges, shop-fittings and sign gantries.
15. MBIE understands that some circular hollow sections (CHS) are used for reticulation, but most HSS, whether CHS or rectangular hollow sections (RHS), is processed or fabricated to meet a wide range of end uses and applications, such as agricultural, automotive, mechanical handling, engineering, general manufacturing, and construction. Submissions received in time for this report indicate that there are broadly two market segments for HSS, namely manufacturing and construction. Construction is a broad term that MBIE understands to cover many types of construction.
16. MBIE acknowledges that there is potential for some HSS to be incorporated into a residential building. The non-exhaustive list of building materials in the Act includes a number of products that could be made of HSS, such as framing and framing elements, supporting beams, partitioning, pipes, tubing, pipe fittings and fixed cabinetry. These building materials or products are also made of materials other than HSS such as timber or plastic or other forms of steel.
17. MBIE notes the extensive range of uses for HSS and that the overwhelming majority of end uses do not result in incorporation into or association with a building or residential dwelling. MBIE will seek further information on the extent to which HSS could be used as a residential building material.
18. The temporary suspension of provisional measures on HSS as a whole, because a few HSS products can be incorporated into or associated with a residential dwelling, would meet neither the purpose of the Act nor the policy objective of section 14AA of the Act temporarily suspending anti-dumping duties on residential building material.

- The purpose of the Act (section 1A) “is to enable New Zealand to apply anti-dumping and countervailing duties in accordance with its obligations as a party to the WTO Agreement. Anti-dumping and countervailing duties are intended to prevent material injury or the threat of material injury to an industry, or the establishment of an industry being materially retarded, due to dumped or subsidised goods being imported into New Zealand. “
- The policy objective for temporarily suspending anti-dumping duties on residential building materials is to remove a cost on the importation of building materials to “promote competition in the residential construction sector and ultimately lower the cost of building new homes.”

19. On the basis of the information available at this stage in the investigation, MBIE considers that HSS is not a residential building material, and the imposition of provisional measures is not prohibited under section 14AA(2)(a) of the Act.

WTO AD Agreement

20. Provisional measures are covered in Article 7 of the AD Agreement, which provides:

- 7.1 Provisional measures may be applied only if:*
- (i) an investigation has been initiated in accordance with the provisions of Article 5, a public notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments;*
 - (ii) a preliminary affirmative determination has been made of dumping and consequent injury to a domestic industry; and*
 - (iii) the authorities concerned judge such measures necessary to prevent injury being caused during the investigation.*

...

7.3 Provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation.

7.4 The application of provisional measures shall be limited to as short a period as possible, not exceeding four months or, on decision of the authorities concerned, upon request by exporters representing a significant percentage of the trade involved, to a period not exceeding six months. When authorities, in the course of an investigation, examine whether a duty lower than the margin of dumping would be sufficient to remove injury, these periods may be six and nine months respectively.

7.5 The relevant provisions of Article 9 shall be followed in the application of provisional measures.

21. Article 12.2.1 of the AD Agreement provides:

A public notice of the imposition of provisional measures shall set forth, or otherwise make available through a separate report, sufficiently detailed determinations on dumping and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected. Such a notice or

report shall, due regard being paid to the requirement for the protection of confidential information, contain in particular:

- (i) the names of the suppliers or, when this is impracticable, the supplying countries involved;*
- (ii) a description of the product which is sufficient for customs purposes;*
- (iii) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value under Article 2;*
- (iv) considerations relevant to the injury determination as set out in Article 3;*
- (v) the main reasons leading to the determination.*

Summary of Legal Requirements

22. Under the Act the imposition of provisional measures requires that:
 - at least 60 days have passed from the initiation of the investigation
 - the Minister has reasonable cause to believe that the goods are dumped
 - the Minister has reasonable cause to believe that by reason of the dumping the industry is suffering material injury
 - the Minister is satisfied that provisional measures are necessary to prevent material injury being caused during the remaining period of investigation.
23. The AD Agreement includes additional requirements relating to the period of application.

Requirements for the Imposition of Provisional Measures

24. The standard to be met for the imposition of provisional measures is that the Minister must have “reasonable cause to believe” that there is dumping causing material injury, and be satisfied that provisional measures are necessary to prevent material injury being caused during the remaining period of investigation.
25. In this Report the consideration of whether or not there is reasonable cause to believe that there is dumping causing material injury and that provisional measures are necessary to prevent material injury being caused during the remaining period of investigation, is based on information available to MBIE as at 7 June 2018. Additional questionnaire responses, verification visits or further submissions from interested parties received after that date are not reflected in this Report, but will be taken into account in any subsequent consideration.

1.4 Proceedings

26. The investigation was initiated on 9 April 2018. The 60-day period referred to in section 16 of the Act expired on 7 June 2018. The 180-day investigation period will conclude on 5 October 2018, by which time the Minister must make a final determination. The Essential Facts and Conclusions Report is due on 5 September 2018. The four month period referred to in the AD Agreement will depend on when any provisional measures are applied, but they cannot go beyond the date of final determination of 5 October 2018.

27. Questionnaires were sent to importers, manufacturers, and trading intermediaries. Article 7 of the AD Agreement provides for interested parties to have the opportunity to provide information and comments before the imposition of provisional measures, if any.
28. In the questionnaires MBIE advised interested parties that the consideration of the need to impose provisional measures, as summarised in this report, would be based on information to 7 June 2018, reflecting the expiration of 60 days since the initiation of the investigation. References in this Report to information available to “this point in the investigation” refer to this date. Information provided after this date will be taken into account in the preparation of the Essential Facts and Conclusions Report.

Availability of Information

29. Section 6 of the Act provides as follows:
- (1) Where the chief executive is satisfied that sufficient information has not been furnished or is not available to enable the export price of goods to be ascertained under section 4, or the normal value of the goods to be ascertained under section 5, the normal value or export price, as the case may be, shall be such amount as is determined by the chief executive having regard to all available information.*
- (2) For the purposes of subsection (1) the chief executive may disregard any information that the chief executive considers to be unreliable.*
30. Article 6.8 of the AD Agreement provides as follows:
- In cases in which any interested party refuses access to, or otherwise does not provide necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. The Provisions of Annex II shall be observed in the application of this paragraph.*
31. Annex II to the AD Agreement sets out procedures to be followed regarding the request for and provision of information from interested parties. Paragraph 7 of Annex II provides:
- If the authorities have to base their findings, including those with respect to normal value, on information from a secondary source, including the information supplied in the application for the initiation of the investigation, they should do so with special circumspection. In such cases, the authorities should, where practicable, check the information from other independent sources at their disposal, such as published price lists, official import statistics and customs returns, and from the information obtained from other interested parties during the investigation. It is clear, however, that if an interested party does not cooperate and thus relevant information is being withheld from the authorities, this situation could lead to a result which is less favourable to the party than if the party did cooperate.*
32. Information relating to those parties who have not provided information is based on the facts available to this point in the investigation that MBIE considers to be reliable. MBIE

notes that all of the sample manufacturers whose information is being considered in this Report have cooperated fully.

33. MBIE makes available all non-confidential information via the Public File for this investigation. Any interested party is able to request both a list of the documents on this file and copies of the documents on it.

1.5 Report Details

34. In this report, unless otherwise stated, years are calendar years ending 31 December and dollar values are New Zealand dollars (NZD). In tables, column totals may differ from individual figures because of rounding. The term VFD refers to value for duty for New Zealand Customs Service (Customs) purposes.
35. The period of investigation (POI) for dumping is the year ended December 2017, while the investigation of injury involves evaluation of data for the period since January 2012.
36. All volumes are expressed on a metric ton (MT or tonne) basis unless otherwise stated. Exports to New Zealand were generally invoiced in United States dollars (USD) or Australian dollars (AUD). The exchange rates used are those relating to specific transactions, where available, or the Customs exchange rates or the rate that MBIE considers most appropriate in the circumstances, as indicated in the text.
37. It should be noted that this Report provides a summary of the information, analysis and conclusions relevant to this particular investigation, and should not be accorded any status beyond that.

2. Subject Goods and New Zealand Industry

2.1 Subject Goods

38. The subject goods identified by NZ Steel were:

Certain electric resistance welded pipe and tube made of carbon steel, comprising circular and noncircular hollow sections, collectively referred to as hollow steel sections (HSS)

39. The characteristics of the particular goods, as identified by NZ Steel in its application, included the following:

- **Finish types:** galvanised including in-line galvanised, pre-galvanised or hot-dipped galvanised (HDG); or non-galvanised, including but not restricted to, painted, black, lacquered or oiled finishes.
- **Sizes:** circular products with a nominal diameter up to and including 150mm; or oval, square and rectangular products with a perimeter up to and including 520mm.

40. NZ Steel noted that the goods may also be categorised according to minimum yield strength, the most common classification being 250 and 350 MPa.

41. During the investigation to date questions have been raised about the scope of the description of subject goods:

- Some interested parties submitted that the New Zealand industry is unable to produce goods of certain specifications required to meet market demand, including steel of the greater dimensions described by NZ Steel as the subject goods.
- Some other differences in the characteristics of imported versus New Zealand-produced HSS were also raised, such as production methods for galvanised products and available finishes.

42. MBIE is undertaking a detailed examination of the goods in this investigation to ensure that there is a proper correlation between the goods produced by the domestic industry to which injury claims apply (the like goods), and the imported goods which are said to be causing that injury (the subject goods). The analysis, which will take account of comments from interested parties, was not completed in time for this Report, but its outcome will inform the Essential Facts and Conclusions Report. For this Provisional Measures Report, the subject goods are those identified above.

43. The tariff concessions system provides for tariff-free entry of goods that are not available from New Zealand producers. MBIE considers that the subject goods description should exclude goods subject to tariff concessions other than goods subject to the temporary tariff concession for residential building materials.

44. In its submission on the question of the scope of description of the subject goods, NZ Steel disagrees that HSS subject to general tariff concessions should be excluded on grounds that

tariff concessions are provided under the Tariff Act 1988 in the form of “a limited review” rather than using the term “like goods”. NZ Steel considers that “like goods” goes beyond the Tariff Act by incorporating “likeness in terms of injury matters.” MBIE will consider this matter further when deciding on the scope of the description of like goods.

Tariff Items

45. In its application, NZ Steel noted that the New Zealand tariff classification, including statistical keys, does not fully align with the subject goods description.
46. In 2017, the four tariff item/statistical keys were split out into 24 tariff item/ statistical keys in the New Zealand Tariff due to the introduction of new statistical keys. These tariff items and statistical keys cover the dimensions produced by the New Zealand industry, namely circular HSS with a nominal internal diameter under 102mm and rectangular/square HSS up to 400mm. The tariff items and statistical keys set out below include oval sections, while some of the statistical keys relating to non-circular goods do cover goods that NZ Steel does not produce (73066100 63 to 70 to the extent that the perimeter exceeds 400mm).

HS2017	Description
<i>Circular sections</i>	
<i>Previously 7306301911</i>	
73063019 23	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, plated or coated with zinc, screwed, welded, of circular cross-section, of a nominal internal diameter under 102mm
73063019 41	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, plated or coated with metals other than zinc, screwed, welded, of circular cross-section, of a nominal internal diameter under 102mm
73063019 61	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, painted, lacquered or similarly coated, screwed, welded, of circular cross-section, of a nominal internal diameter under 102mm
73063019 81	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, screwed, welded, of circular cross-section, of a nominal internal diameter under 102mm [other]
<i>Previously 7306301921</i>	
73063019 31	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, plated or coated with zinc, unscrewed, welded, of circular cross-section, of a nominal internal diameter under 102mm
73063019 51	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, plated or coated with metals other than zinc, unscrewed, welded, of circular

	cross-section, of a nominal internal diameter under 102mm
73063019 71	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, painted, lacquered or similarly coated, unscrewed, welded, of circular cross-section, of a nominal internal diameter under 102mm
73063019 91	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, unscrewed, welded, of circular cross-section, of a nominal internal diameter under 102mm [other]
Square and rectangular sections	
Previously 7306610019	
73066100 51	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, plated or coated with zinc, of wall thickness not over 2.6mm
73066100 53	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, plated or coated with zinc, of wall thickness over 2.6mm
73066100 54	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, plated or coated with metals (excluding zinc), of wall thickness not over 2.6mm
73066100 55	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, plated or coated with metals (excluding zinc), of wall thickness over 2.6mm
73066100 56	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, (painted, lacquered or similarly coated), of wall thickness not over 2.6mm
73066100 57	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, (painted, lacquered or similarly coated), of wall thickness over 2.6mm
73066100 58	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, not elsewhere classified in subheading 7306.61, of wall thickness not over 2.6mm [other]
73066100 59	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, not elsewhere classified in subheading 7306.61, of wall thickness over 2.6mm [other]
Previously 7306610027	
73066100 63	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm, plated or coated with zinc, of wall

	thickness not over 2.6mm
73066100 64	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm , plated or coated with zinc, of wall thickness over 2.6mm
73066100 65	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm , plated or coated with metals (excluding zinc), of wall thickness not over 2.6mm
73066100 66	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm , plated or coated with metals (excluding zinc), of wall thickness over 2.6mm
73066100 67	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm , (painted, lacquered or similarly coated), of wall thickness not over 2.6mm
73066100 68	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm, (painted, lacquered or similarly coated), of wall thickness over 2.6mm
73066100 69	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm , not elsewhere classified in subheading 7306.61, of wall thickness not over 2.6mm [other]
73066100 70	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm , not elsewhere classified in subheading 7306.61, of wall thickness over 2.6mm [other]
Oval sections	
73066900 19	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, of other non-circular cross-section; of a nominal internal diameter less than 102mm [other]
73066900 21	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, of other non-circular cross-section; of a nominal internal diameter of 102mm or more but less than 229mm
73066900 29	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, of other non-circular cross-section [other]

47. Note that the tariff descriptions of the goods are indicative only and are not dispositive of the description of the subject goods.
48. Goods entering under these tariff items/statistical keys have provided the basis for the import data used below.

Duties

49. The following are the rates of Customs duty applicable to the subject goods.

Tariff Item	Normal Tariff (MFN) - %	Preferential Tariff - %
7306.30.19	5	Free* CA Free
7306.61.00	5	Free* CA Free
7306.69.00	5	Free* CA Free

*Unless otherwise indicated, the following rates in the Preferential Tariff are Free:

- AAN – ASEAN, Australia, New Zealand Free Trade Agreement (AANZFTA): from 2012 - Free
- AU – NZ-Australia Closer Economic Relations (CER): from 1990 - Free
- CN – NZ-China Free Trade Agreement (FTA): 2008 – 5%; 2009 – 5%; 2010 – 3%; 2011 – 2%; from 2012 - Free
- HK – NZ-HK China Closer Economic Partnership (CEP): from 2011 - Free
- KR - NZ-Korea FTA: from 2016 - Free
- LLDC – Least Developed Countries: from 2005 - Free
- MY – NZ-Malaysia FTA: 2010 – 5%; 2011 – 3%; from 2012 - Free
- Pac – South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA): from 1981 - Free
- SG – NZ-Singapore CEP: from 2001 - Free
- TH – NZ-Thailand CEP- 2005 – 5.5%; 2006 - 5.5%; 2007 – 5.5%; 2008 – 5%; 2009 – 5%; 2010 - Free
- TPA – P4 (Trans-Pacific Strategic Economic Partnership): 2006 - 5.5%; 2007 – 5.5%; 2008 – 5%; 2009 – 5%; 2010 - Free
- TW – Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Cooperation (ANZTEC): from 2014 - Free
- CA – Canada

Note: there are no Less Developed Country (LDC) rates for these goods.

Imports of Subject Goods

50. MBIE has identified imports entering under the tariff items and statistical keys identified above, adjusted to remove goods entering under tariff concessions⁵, apart from the building materials tariff concession that has been in place since July 2014. An adjustment has also been made to include goods from one Chinese supplier that MBIE has good reason to accept were misclassified. On this basis, Table 2.1 below shows imports in the years covering the period of investigation, adjusted as noted above.

Table 2.1: Import volumes of HSS to New Zealand (tonnes)
Customs data, adjusted*

	2010	2011	2012	2013	2014	2015	2016	2017
Australia	10054	9742	9041	10643	8565	2424	2448	3084
China	4565	4873	7220	8637	8791	11631	12215	11662
Malaysia	282	106	253	364	358	287	404	722
Other	932	495	758	427	1049	485	653	858
Total	15834	15215	17272	20071	18763	14826	15720	16326

* Adjusted as described in paragraph 50 above.

51. Imports from China represented 71 per cent of total imports in 2017, while imports from Malaysia represented 4.4 per cent, neither of which are less than the import share of 3 per cent identified in Article 5.8 of the AD Agreement as the basis for terminating an investigation, as referred to in section 11(2)(c) of the Act.

2.2 Like Goods and New Zealand Industry

52. Section 3A of the Act defines the term **industry** as:
- a. the New Zealand producers of like goods, or
 - b. such New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods.
53. Section 3(1) of the Act defines **like goods**, in relation to any goods, as:
- a. other goods that are like those goods in all respects, or
 - b. in the absence of goods referred to in paragraph (a), goods which have characteristics closely resembling those goods.

⁵ Tariff concessions are generally approved for goods where no suitable alternative goods are produced or manufactured locally in New Zealand.

2.2.1 Like Goods

54. To establish the existence and extent of the New Zealand industry for the purposes of an investigation into injury, and having identified the subject goods, it is necessary to determine whether there are New Zealand producers of goods which are like those goods in all respects, or have characteristics which closely resemble the subject goods.
55. The scope of the subject goods is defined in section 2.1 above.
56. In its application, NZ Steel identified the characteristics that it considered provided the basis for concluding that the goods it produces are like the subject goods. These characteristics included physical characteristics and likeness, commercial likeness, function/substitutability and end-use likeness, production likeness, and substitutability and price transparency/spillover.

MBIE Consideration

57. To determine whether the goods produced in New Zealand are like goods to the subject goods, MBIE normally considers physical characteristics, function and usage, pricing structures, marketing and any other relevant considerations, with no one of these factors being necessarily determinative.

Physical Characteristics

58. Products made locally by NZ Steel have the same physical characteristics as the allegedly dumped goods from China and Malaysia, including size and finish characteristics.

Production Methods

59. Production methods for the locally produced steel coil and the allegedly dumped goods from China and Malaysia are substantially similar.

Function and Usage

60. Both the locally produced and allegedly dumped goods have comparable or identical end uses.

Pricing

61. The allegedly dumped goods have a similar pricing structure to NZ Steel's manufactured products.

2.2.2 New Zealand Industry

62. Section 3A of the Act sets out the meaning of industry:

For the purposes of this Act, the term industry, in relation to any goods, means—
(a) the New Zealand producers of like goods; or
(b) such New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods.

63. In its application, NZ Steel identified three other producers of HSS products, and concluded that two of them produced like goods. Letters of support for the application from these producers were included in the application. NZ Steel estimated that the combined production of these two companies was equivalent to 10 per cent of New Zealand production of like goods.
64. MBIE has obtained further information on the production of the other two companies producing HSS.
65. The assessment of injury to the domestic industry is required to address the industry as a whole, but in accordance with section 3A any finding of injury can relate to those New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods. In this case, NZ Steel production, at 10 per cent of such production, would be sufficient to constitute the industry.

3. Interested Parties

3.1 Legal Requirements

66. Section 3 of the Act identifies the parties who are to be given notice under section 3E of the Act, including:

- the Government of the country of export
- exporters and importers known by the chief executive to have an interest in the goods
- the applicant in relation to the goods

67. Article 6.11 of the AD Agreement provides:

For the purposes of this Agreement, "interested parties" shall include:

- (i) an exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or importers of such product;*
- (ii) the government of the exporting Member; and*
- (iii) a producer of the like product in the importing Member or a trade and business association a majority of the members of which produce the like product in the territory of the importing Member.*

This list shall not preclude Members from allowing domestic or foreign parties other than those mentioned above to be included as interested parties.


68. Notice of initiation of the investigation was provided to the parties listed in section 9 of the Act.

3.2 New Zealand Producers

69. In its application NZ Steel identified other producers of like goods. The producers making up the New Zealand industry are identified below.

Table 3.1: New Zealand Producers of HSS

Manufacturing Company	2017 MT
NZ Steel (applicant)	
Industrial Tube Manufacturing Co Ltd (Industrial Tube)	
New Zealand Tube Mills Ltd (NZ Tube Mills)	

Steelpipe (not considered to be like goods by NZ Steel)	
Total production	

70. MBIE sent questionnaires to the producers identified above in order to verify the information provided by NZ Steel and to obtain information relevant to the investigation.⁶ The production figures above are based on responses from manufacturers.

71. Information provided by NZ Steel includes:

- the application which provided the basis for the Initiation Report
- information verified by MBIE during a visit to the company’s premises on 27-29 May 2018.

72. Information provided by other New Zealand producers included information on products produced, sales and volumes.

3.3 Manufacturers

73. Chinese and Malaysian manufacturers supplying HSS to New Zealand via a range of intermediary exporters were identified from Customs data and questionnaire responses provided by intermediary exporters and importers. For the purposes of the investigation, a sample of the main Chinese suppliers to New Zealand was identified, making up 86 per cent of 2017 imports of HSS from China, while there was one Malaysian manufacturer responsible for the manufacture of exports to New Zealand.

China

74. The AD Agreement, at Article 6.10, provides that authorities may limit their examination either to a reasonable number of interested parties by using samples which are statistically valid on the basis of information available to the authorities at the time of the selection, or to the largest percentage of the volume of exports which can reasonably be investigated.

⁶ Relevant WTO dispute findings can be found in *EC – Bed Linen*, “[I]t is clear from the language of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (GATT) 1994 (the AD Agreement), in particular Articles 3.1, 3.4, and 3.5, that the determination of injury has to be reached for the domestic industry that is the subject of the investigation. ... In our view, it would be anomalous to conclude that, because the [investigating Member] chose to consider a sample of the domestic industry, it was required to close its eyes to and ignore other information available to it concerning the domestic industry it had defined. Such a conclusion would be inconsistent with the fundamental underlying principle that anti-dumping investigations should be fair and that investigating authorities should base their conclusions on an objective evaluation of the evidence. It is not possible to have an objective evaluation of the evidence if some of the evidence is required to be ignored, even though it relates precisely to the issues to be resolved.” (Panel Report, WTO document WT/DS141/R, at para 6.180)

MBIE has adopted this latter approach in the investigations of both dumping and subsidisation of HSS from China, which reflects past practice. Customs data indicates that in 2017 there were 22 suppliers of HSS from China, some of which are likely to have been trading intermediaries, supplying 24 importers. The majority of such suppliers were responsible for less than 50 tonnes each of exports in 2017. In these circumstances, and in view of the time and effort required to track down each supplier in order to obtain details of the manufacturer concerned, it was considered to be impracticable and unnecessary to examine all manufacturers.

75. The Chinese manufacturers were identified as either supplying direct to New Zealand importers or through the intermediaries handling their goods. There were some difficulties in quickly identifying the manufacturer supplying the intermediary Sanwa Pty Ltd, and it was not until their questionnaire response was received that the identity of the relevant manufacturer was confirmed. Another manufacturer which was initially believed to be supplying the subject goods through Sanwa Pty Ltd has therefore been excluded from the sample. Also, one manufacturer identified itself as providing the subject goods despite not appearing in Customs data for the tariff items/statistical keys concerned, and has been included in the sample on the basis of the volume of goods it stated had been exported. The four manufacturers now identified as the sample are shown in Table 3.2 below. The companies are listed alphabetically.

Table 3.2: Sample of Chinese Manufacturers of HSS

Manufacturing Company	Company Location	2017 MT
Dalian Steelforce Hi-Tech Co Ltd (Dalian Steelforce)	No 26, Number 2 Street Dalian Development Zone Dalian Liaoning Province	
Hengshui Jinghua Steel Pipe Co., Ltd (Hengshui Jinghua)	Taocheng North Road Hengshui City Hebei Province	
Jinan MECH Piping Technology Co Ltd (Jinan Mech)	Meigui Zone of Industrial Park Pingyin Jinan Shandong Province	
Tianjin Youfa Steel Pipe Group (Tianjin Youfa)	15 Floor Guotou Building Dafeng Road Tianjin Municipality	

76. Information was sought from all manufacturers. Dalian Steelforce, Jinan Mech and Tianjin Youfa responded to the Ministry's request for information. Because of the belated identification of Hengshui Jinghua the questionnaire response was not required at the same time as the other sample manufacturers, and the company is not regarded as non-cooperative, at this point in the investigation.

Dalian Steelforce

77. Dalian Steelforce is a wholly-owned foreign enterprise, owned by Steelforce Australia Pty Ltd, an Australian private company. Dalian Steelforce was established in June 2005, and operates a high precision cold rolling steel mill in Dalian in Liaoning Province. The company produces cold rolled galvanized and painted hollow sections and fabricated products, with high integration of production, processing, sales and exportation.
78. Production includes galvanized and painted sections, ranging in size from 20x20mm to 150x150mm; pipe from 15NB (nominal bore) to 219.1OD (outside diameter); finishes including no coating, in-line paint, pre-galvanized and hot-dipped galvanized; and round, square, rectangular and oval pipe and tube. All products are made to order and comply with relevant Australian and New Zealand standards.
79. Exports to New Zealand were made through an intermediary. The main New Zealand customers in 2017 were [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Dalian Steelforce was a party to the Australian Anti-Dumping Commission (ADC) investigation into HSS.
80. Dalian Steelforce provided a detailed response to the Manufacturer's Questionnaire, and also provided a submission on injury-related issues that was received on 6 June 2018 (but dated 6 May 2018).

Hengshui Jinghua

81. Hengshui Jinghua Pipe Co., Ltd. was founded in 1993, under Jinghua Innovation Group, and is a private company located in Hengshui City, Hebei Province.
82. Because Hengshui Jinghua was not initially identified as a major supplier of HSS exported to New Zealand, the despatch of a Manufacturer's Questionnaire was delayed and no response had been received (or was expected) in time to be covered in this Report.
83. Hengshui Jinghua was a party to the ADC investigation of HSS.

Jinan Mech

84. Jinan Mech is a subsidiary of [REDACTED], a private company, and is the 100 per cent owner of Jinan Malleable Pipe Manufacturing Co Ltd.
85. Jinan Mech specializes in manufacturing of welded steel pipes. It is located in the Meigui Zone of Industrial Park, Pingyin, Shandong Province, and has an annual capacity of up to [REDACTED] MT of various steel pipes.
86. Jinan Mech did not appear in the original list of manufacturers identified on the basis of Customs data for imports of the subject goods, but approached MBIE independently following publication of advice of the initiation of the investigation. Following this

approach, MBIE checked information available and established that imports from Jinan Mech had been misclassified, and should have been included in the subject goods.

87. Jinan Mech exports direct to [REDACTED] in New Zealand and through a trader, [REDACTED], which supplied [REDACTED].

88. Jinan Mech provided a detailed response to the Manufacturers Questionnaire.

Tianjin Youfa

89. Tianjin Youfa is a large-scale steel pipe manufacturing enterprise producing ERW (electric resistance welding) steel pipes, hot-dip galvanized steel pipes, oil casing pipes, SSAW (spiral submerged arc welded) steel pipes, square/rectangular steel pipes and steel-plastic complex steel pipes. Tianjin Youfa is located in in Daqiuzhuang Village, Jinghai County, Tianjin City.

90. The Youfa Group has nine subsidiaries related to HSS production and sales:

- Branch No. 1, located in Youfa Industrial Park, Daqiuzhuang, Jinghai, Tianjin
- Branch No. 2, located in Daqiuzhuang, Jinghai, Tianjin
- Dezhong, located in Caigongzhuang Industrial Park, Jinghai, Tianjin
- Tangshan Youfa, located in Fengnan Development Zone, Tangshan, Hebei Province
- Zhengyuan, located in Coastal Industrial Park, Fengnan District, Tangshan, Hebei Province
- Handan Youfa, located in Shangcheng Industrial Park, Chengan, Handan, Hebei Province
- Youfa Sales, located in Daqiuzhuang, Jinghai, Tianjin
- Youfa International Trade, located in Hongqiao, Tianjin
- Youfa Hongtuo, located in Youfa Industrial Park, Daqiuzhuang, Jinghai, Tianjin

91. Exports to New Zealand were produced mainly by No. 1 Branch, but by other plants for some products. Financial information was provided for each individual subsidiary.

92. Exports to New Zealand were undertaken through an intermediary. In 2017 the main New Zealand customers were [REDACTED].

93. Tianjin Youfa was a party to the ADC's Continuance Review of HSS.

94. Tianjin Youfa provided a detailed response to the Manufacturer's Questionnaire

Malaysia

95. As noted above, there is only one manufacturer of the goods exported to New Zealand, identified as Alpine Manufacturing Sdn Bhd, of Selangor Darul Eihсан, Malaysia (Alpine Pipe).

Alpine Pipe

96. Alpine Pipe is a large scale HSS manufacturer operating in Klang, Malaysia.

97. Alpine Pipe exports to New Zealand direct to New Zealand importers [redacted] and through trading intermediaries [redacted]. These intermediaries supply the following New Zealand importers: [redacted]

3.4 Trading Intermediaries

98. Trading intermediaries (exporters) were identified from Customs data and from questionnaires sent to known importers and manufacturers.
99. Table 3.2 below shows four exporters, primarily trading companies acting as intermediaries between Chinese producers and New Zealand importers, who were originally identified as exporting the subject goods from the sample manufacturers in 2017. There are four exporters acting as intermediaries between the Malaysian producer and New Zealand importers. The companies are listed alphabetically.

Table 3.3: Trading Intermediaries for HSS

Exporting company	Company Location	2017 MT
China		
Datum Ltd	Hong Kong	[redacted]
Sanwa Pty Ltd	Australia	[redacted]
Steelforce Trading Pty Ltd (Steelforce Trading)	Australia	[redacted]
Other		[redacted]
Malaysia		
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

100. Information was sought from all of the trading intermediaries. Only Datum Ltd did not respond. Some invoices were provided by Sanwa. There was a limited response from one trading intermediary for Malaysian HSS.

3.5 Importers

101. New Zealand-based importers were identified from Customs data. Table 3.3 below shows the main importers that MBIE has identified.

Table 3.4: Importers of HSS

Importing company	2017 MT
China	
Fletcher Steel Limited (Fletcher Steel)	[REDACTED]
HJ Asmuss & Co Limited (HJ Asmuss)	[REDACTED]
Steel & Tube Holdings Ltd (Steel & Tube)	[REDACTED]
Tasman PVR (Tasman)	[REDACTED]
United Steel Limited (United Steel)	[REDACTED]
Other	[REDACTED]
Malaysia	
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

102. Information was sought from all of the named importers, with responses received from Fletcher Steel, HJ Asmuss and [REDACTED]. Alrite Steel & Services NZ Ltd also provided a submission.

3.6 Other Interested Parties

103. No other interested parties have come forward or have been identified.

4. Dumping Investigation

4.1 Dumping

104. Section 3 of the Act includes the following definitions:

***dumping**, in relation to goods, means the situation where the export price of goods imported into New Zealand or intended to be imported into New Zealand is less than the normal value of the goods as determined in accordance with the provisions of this Act, and **dumped** has a corresponding meaning.*

105. The dumping investigation determines export prices and normal values in accordance with the provisions of the Act and the AD Agreement, and makes a proper comparison between them in order to establish whether and to what extent any dumping is occurring.

106. MBIE has compared export prices to normal values on a weighted-average to weighted-average basis. The basis of this method involves comparing the weighted average export price and the weighted average normal value across the POI (dumping). The weighted-average to weighted-average methodology is used by MBIE when there are a high number of export transactions or where there are a large number of different model types at different prices making up the goods under investigation. Using the weighted-average to weighted-average prices, MBIE is then able to establish whether or not the goods were dumped across the POI.

4.2 Basis for Investigation of Dumping

107. The information available to MBIE in investigating the dumping of HSS from China and Malaysia includes:

- information contained in NZ Steel's application and subsequent submissions, and from MBIE's verification visit to NZ Steel
- information from other New Zealand manufacturers of subject goods
- responses to importer/exporter/manufacturer questionnaires and subsequent submissions
- information from investigations undertaken by other jurisdictions
- information from previous MBIE investigations
- information from WTO jurisprudence and other documents
- information from industry reports and other published material relating to the Chinese and Malaysian steel industries
- information from NZ Customs
- information arising from MBIE's independent research.

108. The objective of the investigation is to establish if there is dumping, i.e. the export price of the goods is less than the normal value when a fair comparison is made.

4.2.1 Questionnaire Responses

109. Exporter's questionnaires were sent to the main suppliers identified in Customs data. These companies are primarily trading intermediaries, in two cases associates of the manufacturers. Only one of the main trading intermediaries for goods from China did not respond to the questionnaire while there were no substantive responses from any of the trading intermediaries for Malaysian HSS.
110. Importer's questionnaires were sent to the importers of HSS from the sampled manufacturers. Responses were received from two of the main importers and a voluntary submission was received from a smaller importer.
111. MBIE sent manufacturer's questionnaires to each of the sample manufacturers identified in section 3.4 above. Detailed responses were received from Alpine Pipe, Dalian Steelforce, Jinan Mech and Tianjin Youfa. The other sample manufacturer, Hengshui Jinghua, was not expected to provide a response in time for inclusion in this Provisional Measures Report.

4.3 Export Price

112. Section 4 of the Act provides that export prices are:

(1) Subject to this section, for the purposes of this Act, the export price of any goods imported or intended to be imported into New Zealand which have been purchased by the importer from the exporter shall be—

(a) where the purchase of the goods by the importer was an arm's length transaction, the price paid or payable for the goods by the importer other than any part of that price that represents—

(i) costs, charges, and expenses incurred in preparing the goods for shipment to New Zealand that are additional to those costs, charges, and expenses generally incurred on sales for home consumption; and

(ii) any other costs, charges, and expenses resulting from the exportation of the goods, or arising after their shipment from the country of export; or

(b) where the purchase of the goods by the importer was not an arm's length transaction, and the goods are subsequently sold by the importer in the condition in which they were imported to a person who is not related to the importer, the price at which the goods were sold by the importer to that person less the sum of the following amounts:

(i) the amount of any duties and taxes imposed under any Act; and

(ii) the amount of any costs, charges, or expenses arising in relation to the goods after exportation; and

(iii) the amount of the profit, if any, on the sale by the importer or, where the Secretary so directs, an amount calculated in accordance with such rate as the Secretary determines as the rate of profit on the sale by the importer having regard to the rate of profit that would normally be realised on sales of goods of the same category by the importer where such sales exist; or

(c) where the purchase of the goods by the importer was not an arm's length transaction, and the goods are subsequently sold by the importer in a condition different from the condition in which they were imported, a reasonable price determined by the Secretary in the circumstances of the case.

(2) Where—

(a) goods are or are to be shipped to New Zealand on consignment and there is no known purchaser in New Zealand for the goods; or

(b) there is no exporter's sale price or no price at which the importer or a person not related to the importer, has purchased or agreed to purchase the goods,—

the export price, for the purposes of this Act, shall be determined in such manner as the Secretary considers appropriate having regard to all the circumstances of the exportation.

113. The starting point for MBIE is the documentation (usually invoices) for each shipment, which shows the price paid or payable for the goods by the purchaser. MBIE requests this information from both exporters and importers in its questionnaires. It also requests documentation of other costs incurred in exportation of the goods. The purchase price paid, whether by the importer or an intermediary, is the starting point for the calculation of the export price and is referred to as the “base price”.
114. Adjustments are then made to take the base price back to the ex-factory level and to ensure a fair comparison with the normal value. Adjustments to calculate an ex-factory price generally cover costs such as inland freight between the factory and the port, port charges and bank charges. Most fair comparison adjustments are made to the normal value, but those relating to differences in the cost of credit and packaging are usually made to the full extent of the costs involved to both the export price and normal value.
115. In some cases there is an intermediary involved which acts as a facilitator of the sales and shipment of the goods. Where the exporter is a trader rather than the manufacturer of the goods, adjustments are made for the trader's profit margin and any other costs associated with the trade to ensure an ex-factory equivalent is achieved.

4.3.1 Export Price – China

116. For the purposes of this Provisional Measures Report, MBIE has used information provided in questionnaire responses from Dalian Steelforce, Jinan Mech and Tianjin Youfa.

Dalian Steelforce

117. Dalian Steelforce's exports to New Zealand consisted of [REDACTED] categories of HSS by shape and finish. Dalian Steelforce invoiced these sales in AUD on a [REDACTED] basis via a trading intermediary. Dalian Steelforce provided MBIE with invoices for some exports to New Zealand during the POI. All export sales are on a per tonne basis. Export sales to New Zealand were made exclusive of VAT.
118. Base prices for Dalian Steelforce's sales for export to New Zealand are the net invoiced [REDACTED] prices in RMB.

119. MBIE made adjustments for cost of credit. Cost of credit was calculated based on the number of days between the invoice date and payment. An appropriate commercial interest rate of [REDACTED] per cent was provided by Dalian Steelforce to calculate the cost of credit.
120. After making adjustments, MBIE calculated a weighted average export price for HSS of RMB [REDACTED].

Jinan Mech

121. Jinan Mech's exports to New Zealand consisted of [REDACTED] categories of circular HSS product by nominal bore size and finish. Jinan Mech invoiced these sales in USD on the basis of [REDACTED] Qingdao. Jinan Mech provided MBIE with invoices for exports to New Zealand during the POI. All export sales are on a per MT basis. VAT was not stated on the invoices and MBIE assumes that no VAT was charged on export sales to New Zealand.
122. The base prices for Jinan Mech's sales for export to New Zealand are the net invoiced [REDACTED] prices in USD converted to RMB at exchange rates supplied by Jinan Mech for each month in which there was a shipment to New Zealand.
123. MBIE made adjustments by deducting costs of inland freight, handling, loading, a bank charge, for ancillary expenses and for cost of credit. MBIE calculated a cost of credit adjustment based on the number of days between invoice date and payment using the interest rate of [REDACTED] per cent that Jinan Mech used to calculate the cost of credit on domestic sales. In a supplementary questionnaire, MBIE asked Jinan Mech for clarification about ancillary expenses, but for purposes of this report has assumed these costs are additional export costs.
124. After making adjustments, MBIE calculated a weighted average export price for HSS of RMB [REDACTED].

Tianjin Youfa

125. Tianjin Youfa's exports to New Zealand consisted of [REDACTED] main categories of HSS by shape and finish. Tianjin Youfa invoiced export sales on both a [REDACTED] and [REDACTED] basis. MBIE was provided with invoices for all export sales to New Zealand during the POI. All export sales are on a per tonne basis and are exclusive of VAT.
126. The base price for Tianjin Youfa's export sales to New Zealand are the net invoiced [REDACTED] or [REDACTED] price in USD and converted to RMB at exchange rates provided by Tianjin Youfa for each transaction. Bank remittance notices were provided by Tianjin Youfa for each export sale.
127. MBIE made adjustments for costs of inland freight, handling, loading and ancillary expenses, overseas freight, insurance, packing, and cost of credit. MBIE calculated a cost of credit adjustment based the number of days between invoice date and payment using the interest rate of [REDACTED] per cent that Tianjin Youfa provided as an appropriate interest rate for calculating cost of credit.

128. After making adjustments, MBIE calculated a weighted average export price for HSS of RMB [REDACTED].

4.3.2 Export Price – Malaysia

Alpine Pipe

129. Alpine Pipe exported both square and rectangular hollow sections to New Zealand during 2017 on an [REDACTED] basis. Alpine Pipe provided detailed listings of all sales to New Zealand during the POI and included sample invoices. All exports are on a per tonne basis and are exclusive of VAT.

130. The base price for Alpine Pipe's export sales to New Zealand are the net invoiced [REDACTED] price in MYR.

131. MBIE made adjustments for delivery costs, which were provided as an average for all New Zealand sales, and cost of credit. MBIE calculated cost of credit based on the number of days between invoice date and payment using the interest rate of [REDACTED]% provided by Alpine Pipe as an appropriate commercial interest rate for calculating cost of credit.

132. After making adjustments, MBIE calculated a weighted average export price for HSS of MYR [REDACTED].

4.4 Normal Value

133. Section 5 of the Act provides the basis for determining normal values:

(1) Subject to this section, for the purposes of this Act, the normal value of any goods imported or intended to be imported into New Zealand shall be the price paid for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arm's length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

(2) Where the Secretary is satisfied that the normal value of goods imported or intended to be imported into New Zealand cannot be determined under subsection (1) because—

(a) there is an absence of sales that would be relevant for the purpose of determining a price under that subsection; or

(b) the situation in the relevant market is such that sales in that market that would otherwise be relevant for the purpose of determining a price under subsection (1) are not suitable for use in determining such a price; or

(c) like goods are not sold in the ordinary course of trade for home consumption in the country of export in sales that are arm's length transactions by the exporter and it is not practicable to obtain within a reasonable time information in relation to sales by other sellers of like goods that would be relevant for the purpose of determining a price under subsection (1),—

the Secretary may determine that the normal value, for the purposes of this Act, shall be either—

(d) the sum of—

(i) such amount as is determined by the Secretary to be the cost of production or manufacture of the goods in the country of export; and
(ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export,—

(A) such amounts as the Secretary determines would be reasonable amounts for administrative and selling costs, delivery charges, and other charges incurred in the sale; and

(B) an amount calculated in accordance with such rate as the Secretary determines would be the rate of profit on that sale having regard to the rate of profit normally realised on sales of goods (where such sales exist) of the same general category in the domestic market of the country of export of the goods; or

(e) the price that is representative of the price paid for similar quantities of like goods sold at arm's length in the ordinary course of trade in the country of export for export to a third country.

(3) Where the normal value of goods imported or intended to be imported into New Zealand is the price paid for like goods, in order to effect a fair comparison for the purposes of this Act, the normal value and the export price shall be compared by the Secretary—

(a) at the same level of trade; and

(b) in respect of sales made at as nearly as possible the same time; and

(c) with due allowances made as appropriate for any differences in terms and conditions of sales, levels of trade, taxation, quantities, and physical characteristics, and any other differences that affect price comparability.

(4) Where the normal value of goods exported to New Zealand is to be ascertained in accordance with subsection (2), the Secretary shall make such adjustments as are necessary to ensure that the normal value so ascertained is properly comparable with the export price of those goods.

(5) Where—

(a) the actual country of export of goods imported or intended to be imported into New Zealand is not the country of origin of the goods; and

(b) the Secretary is of the opinion that the normal value of the goods should be ascertained for the purposes of this Act as if the country of origin were the country of export,—

the Secretary may direct that the normal value of the goods shall be so ascertained.

(6) Where the Secretary is satisfied, in relation to goods imported or intended to be imported into New Zealand, that—

(a) the price paid for like goods—

(i) sold for home consumption in the country of export in sales that are arm's length transactions; or

(ii) sold in the country of export to a third country in sales that are arm's length transactions,—

is, and has been for an extended period of time and in respect of a substantial quantity of like goods, less than the sum of—

(iii) such amount as the Secretary determines to be the cost of production or manufacture of the like goods in the country of export; and

(iv) such amounts as the Secretary determines to be reasonable amounts for administrative and selling costs, delivery charges, and other charges necessarily incurred in the sale of the like goods by the seller of the goods; and

(b) it is likely that the seller of those like goods will not be able to fully recover the amounts referred to in subparagraphs (iii) and (iv) of paragraph (a) within a reasonable period of time,—

the price so paid for those like goods shall be deemed not to have been paid in the ordinary course of trade.

4.4.1 Normal Value - China

Basis for Normal Values

134. In its application, NZ Steel used a constructed value for establishing normal values for China because it was not able to obtain a relevant local Chinese market price, since it was not confident that the pricing of comparable volumes of the like goods could be adequately identified in sales of goods of the same general category in China. NZ Steel also claimed that the nature of the Chinese steel industry gives rise to the situation provided for in section 5(2)(b) of the Act, whereby there was an absence of relevant and suitable sales in the ordinary course of trade.
135. Section 5(2)(b) of the Act provides that the chief executive may determine the normal value on the basis of a constructed value or on prices to third country markets if the chief executive is satisfied that the normal value of the goods cannot be determined on the basis of sales in the ordinary course of trade in the home market because the situation in the relevant market is such that sales in that market that would otherwise be relevant for the purposes of determining such a price, are not suitable for such use.
136. NZ Steel argued that continued intervention by the GOC in the Chinese iron and steel industry has distorted the price of HSS and other precursor steel goods. In support of its position, NZ Steel noted evidence in reports by various economic commentators and in applications to, and reports by, trade remedies authorities in other jurisdictions, in particular Canada and Australia. In its application NZ Steel provided, as annexes, an excerpt from the report “Analysis of Steel and Aluminium Markets: Report to the Commissioner of the Anti-Dumping Commission”, published in August 2016 by the Australian Anti-Dumping Commission (ADC), and an excerpt from a Canadian Border Service Agency (CBSA) Statement of Reasons in its *Concrete Reinforcing Bar* investigation in 2014.
137. NZ Steel also noted that the ADC, in its original HSS investigation in 2012, in its investigation of hot rolled plate steel in 2014, and in its galvanised steel coil investigation in 2015, found that there was a particular market situation in China such that prices in the domestic market were not suitable for establishing normal value. In the HSS case, exporters’ production costs were used but with hot rolled coil (HRC) costs based on prices

in Korea, Malaysia and Taiwan. The Continuance Review of HSS in 2015 also found that there was still a particular market situation in China.

Background

138. The use of the provision of the AD Agreement relating to “particular market situation” is related to the treatment of non-market economies, the use of information from surrogate countries, and the change in situation brought about by the expiry of certain provisions in China’s Protocol of Accession to the WTO.

139. The use of surrogate countries is based on the provisions of paragraph 2 of AD Article VI.1 of GATT 1947, which provided:

It is recognized that, in the case of imports from a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State, special difficulties may exist in determining price comparability for the purposes of paragraph 1, and in such cases importing contacting parties may find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate.

140. On the basis of this provision, many countries developed an approach to “non-market economies” which permitted the use of information from surrogate countries for the determination of normal values. As outlined in *Guide to International Anti-Dumping Practice*,⁷ earlier versions of New Zealand’s legislation, up to 1994, included specific provisions for the establishment of normal values in situations where the government of the country of export had a monopoly or substantial monopoly of the trade of the country and determined or substantially influenced the domestic price of goods in that country. In such cases, normal values could be ascertained on the basis of prices of like goods in a third country sold in the ordinary course of trade for home consumption, or sold to another country, or constructed on the basis of third country producer costs, charges and profits.

141. The position outlined above reflected the provisions of the Interpretative Note, and under these provisions New Zealand did use surrogate country prices in a number of cases involving China. However, when the Act was amended in 1994, the provisions relating to non-market economies were omitted. It was considered that in situations where the government of a country did not have a complete or substantially complete monopoly of its trade and the State did not fix all domestic prices, then it would not be possible to apply the provisions of the Note and conclude that prices in such a country could not be used as the basis for determining normal values. It was proposed that with regard to investigations

⁷ Kluwer Law International, 2013, pp 483-4

involving China, account would be taken of the situation applying in the case of each industry and each exporter.

142. The 2001 Protocol of Accession of China to the WTO included section 15, dealing with price comparability in determining subsidies and dumping. This section provided that, in determining price comparability in a dumping investigation of goods from China, authorities in an importing country would use either Chinese prices or costs, or a methodology not based on a strict comparison with domestic prices in and costs in China if the producer under investigation could not show that market economy conditions prevailed in the industry producing the product. These provisions would not apply once China had established, under the national law of the importing country, that it is a market economy, or could establish that market economy conditions prevailed in a particular industry or sector. These provisions expired after 15 years, i.e. at the end of 2016.
143. Paragraph 10 of the Trade and Economic Cooperation Framework Agreement between New Zealand and China, signed in May 2004, formalised the approach adopted by the New Zealand trade remedy authorities, and noted that New Zealand recognised that China had established a market economy system, and New Zealand would not apply sections 15 and 16 of the Protocol of Accession. This agreement ruled out the use of surrogate countries.

Australia

144. Australia is in a similar situation as New Zealand in regard to its recognition that China is a developing country.
145. The ADC Report identified by NZ Steel reviewed evidence of government interventions and trade restrictions in steel-producing countries and identified evidence that such interventions influenced market behaviours and decision-making by producers in Asian steel and aluminium markets in ways that diverge from competitive market behaviours and commercial decisions. The analysis in relation to China considered:
- evidence of a range of different subsidies and tax concessions provided by the GOC to the Chinese steel industry, with an identification of the kinds of subsidies concerned
 - GOC involvement as owner of steel producers accounting for a significant share of total steel production
 - the plans and directives of the GOC for the steel industry, with specific plans and directives identified.

Canada

146. In Canada, the provisions of section 20 of the Special Import Measures Act 1985 (SIMA) allow the determination of normal values on a basis other than domestic prices in the country of export where the country is a “prescribed country” (as is China), and where the CBSA considers that domestic prices in the country of export are substantially determined by the government of that country, and there is reason to believe that prices are not substantially the same as they would be if they were determined in a competitive market.

147. In CBSA *Line Pipe*, The CBSA sought information from exporters and the Government of China (GOC) to assist its consideration under section 20 and in the absence of satisfactory responses relied on its own research to obtain more comprehensive data. The CBSA considered that, based on the information on record, the scope of the GOC's macro-economic policies and measures indicated that the GOC was influencing the Chinese steel industry. It suggested that the use of such policies and measures can dramatically change the demand and supply balance in the domestic market and could influence the domestic prices of steel products such as steel pipe. The CBSA also considered that the GOC's actions to eliminate obsolete steel production and reduce energy-emissions, as well as the plans for mergers and acquisitions, were compelling facts that the GOC is firmly in charge of the reform of the Chinese steel industry. The CBSA suggested that the cumulative effect of the GOC's numerous macro-economic policies and measures has resulted in an environment where enterprises have conflicting objectives, which can affect the products produced, production volumes and ultimately prices. The CBSA believed that the cumulative impact of GOC measures and control indicated that prices of line pipe in China were being indirectly determined by the GOC.
148. Based on its conclusions, the CBSA determined normal values for the exporter from China that submitted a complete response, using a surrogate country methodology pursuant to section 29 of SIMA, based on the average of the normal values from the producers in Turkey and the Republic of Korea that provided complete responses to requests for information.

WTO Requirements

149. There is no WTO jurisprudence of direct application to the determination of what might constitute a "particular market situation" although a number of cases have addressed the consequences in terms of the construction of normal values. For example, the Panel in *EU – Biodiesel (Argentina)*,⁸ in a finding upheld by the Appellate Body, found that the EU Commission acted inconsistently with Article 2.2 by basing the cost of the main raw material used by biodiesel producers on international prices, as opposed to the prices in the Argentine market. The Appellate Body also agreed with the Panel's view that Article 2.2 of the Anti-Dumping Agreement and Article VI:1(b)(ii) of the GATT 1994 do not limit the sources of information that an investigating authority may use in establishing the cost of production in the country of origin. Specifically, the Appellate Body pointed out that an authority may use information from outside the country of origin, provided such

⁸ WTO documents WT/DS473/R at paragraphs 7.258-259 and WT/DS473/AB/R at paragraphs 6.81-6.82.

information is adapted as necessary in order to determine the cost of production in the country of origin.⁹

150. These findings suggest that the approaches adopted by Australia, Canada and the EU to use surrogate values for prices and cost elements, may not be consistent with the AD Agreement. A number of challenges to the methodologies used by these authorities have been launched in the WTO.

MBIE Comment

151. In respect of NZ Steel's first claim, i.e. that it was not confident that pricing of comparable HSS (to that exported to New Zealand) could be adequately identified in sales of goods of the same general category in China, MBIE was able to source Chinese prices of comparable HSS exported to New Zealand from cooperating manufacturers. This pricing information (both domestic and export) will be subject to verification by MBIE officials to the companies' premises in China.
152. In respect of NZ Steel's second concern, i.e. that the nature of the Chinese steel industry gives rise to the situation whereby there is an absence of relevant and suitable Chinese sales in the ordinary course of trade, MBIE has examined the arguments raised by NZ Steel but does not consider there are sufficient grounds for supporting the company's viewpoint. More specifically, MBIE does not consider that domestic prices of HSS, or primary inputs such as HRC, are substantially determined or distorted by the GOC, or that they are not determined in a competitive market to the extent that they should be eliminated for the purposes of calculating normal values. MBIE notes that in the parallel subsidy investigation it has determined that prices of HRC are not controlled by the GOC. On this basis, MBIE does not consider that it should deviate from its usual practice of establishing normal values in China on the basis of domestic selling prices (where appropriate) rather than base Chinese normal values on surrogate country information. While this determination is specific to the present case, this approach is consistent with New Zealand's 2004 decision to recognise China as a market economy country.
153. NZ Steel points to findings of other jurisdictions to support its view, but, MBIE considers there are certain aspects of those findings which makes it averse to relying on them. For instance, in respect of the CBSA conclusion that the GOC exerts control over the Chinese steel industry, and substantially determines prices, the information related to various plans and policies, and levels of government ownership and control, which indicated that the GOC was influencing the Chinese steel industry, such that prices of pipe in China were

⁹ WTO Document WT/DS473/ABR at paragraphs 6.70-6.74.

- indirectly influenced by the GOC. MBIE does not consider that this provides a sufficiently compelling case that a “particular market situation” exists in relation to HSS prices in China.
154. MBIE also notes that there are differences between Canada and New Zealand in the legislative and treaty context within which the determination of normal values can be undertaken.
155. MBIE has also reviewed the matters raised in the Australian ADC Report in the light of its consideration of similar matters in MBIE’s subsidy investigation into HSS from China (conducted parallel to this dumping investigation). On the basis of that consideration, MBIE notes that the subsidies identified by the Australian ADC were frequently not applicable or did not have any significant impact, and that the ownership of steel producers by the GOC did not have an impact on prices for particular steel products. MBIE considers that while the plans and directives for the Chinese steel industry may have a broad impact on the level of activity in the sector, they do not influence prices for particular products to the extent that the situation in the relevant market is such that sales in the Chinese market are not suitable for use in determining prices paid in the ordinary course of trade for like goods sold in the ordinary course of trade for home consumption.
156. In conclusion, MBIE notes its practice has long been to determine normal values either through prices or by construction on a case-by-case basis. In all of the cases involving China since May 2004, there has been no evidence to suggest that prices are not market prices, and MBIE has established normal values on the basis of either sales on the Chinese domestic market (by the investigated manufacturer or by other manufacturers) or, when such information is not available, on the basis of constructed values.
157. Having considered the matters raised by NZ Steel, MBIE has based its determination of normal value on prices in the Chinese market, and has not used prices from third countries. Where there were no sales in the domestic market that were suitable, or where the sales at a loss provision of the AD Agreement is applicable, MBIE has used sales by other producers, in accordance with section 5(1) of the Act.
158. For the purposes of this Provisional Measures Report, MBIE has used information provided in questionnaire responses from Dalian Steelforce, Jinan Mech and Tianjin Youfa.

Dalian Steelforce

159. Dalian Steelforce did not make sufficient sales on the Chinese domestic market to allow MBIE to calculate a normal value ex-factory price. In accordance with section 5(1) of the Act, MBIE therefore used sales made by another producer, [REDACTED], on the Chinese domestic market as an appropriate normal value for Dalian Steelforce.
160. The adjusted normal value for [REDACTED] is RMB [REDACTED]

Jinan Mech

161. Jinan Mech sold HSS for home consumption in China to distributors and users on either a [REDACTED] or [REDACTED]¹⁰ basis. Some domestic sales were made to related parties. Jinan Mech provided a list of its sales of HSS in 2017 to domestic customers who are unrelated customers. The list included plastic-lined pipe which MBIE considers is not like goods to the subject goods. MBIE excluded plastic-lined pipe from its calculation of normal value below.
162. Jinan Mech provided a breakdown of its costs to make and sell in 2017 for HSS sold on the domestic market in China by nominal bore size and finish. Costs were provided for each of the [REDACTED] categories of steel product comparable to those categories exported to New Zealand.
163. There were no sales on the domestic market for [REDACTED] categories of product comparable to the goods exported to New Zealand. The quantity of domestic sales of the comparable and like product was nonetheless more than 5 per cent of the quantity of goods exported to New Zealand, meeting the guidance in the AD Agreement¹¹ for sufficient domestic sales for the determination of normal value.
164. A comparison of the weighted average price for each category against the ex-factory cost for that category showed that [REDACTED] categories of HSS were sold at a loss. A comparison of the weighted average price of sales of all [REDACTED] categories to the weighted average cost for all categories showed, however, that sales of like product were made at a profit of [REDACTED]% for the period of investigation.
165. MBIE used the selling prices net of VAT to distributors and users in China in RMB as the base prices for normal values.
166. MBIE made adjustments by deducting amounts for level of trade (for sales to users), inland freight (for sales on a [REDACTED] basis), after sales expenses not incurred on export sales, and credit costs.

¹⁰ Source: ICC website. The full text of the 2010 edition of the Incoterms rules is available at <http://store.iccwbo.org/>

¹¹ Footnote 5 of the Ad Agreement states: "Sales of the like product destined for consumption in the domestic market of the exporting country shall normally be considered a sufficient quantity for the determination of the normal value if such sales constitute 5 per cent or more of the sales of the product under consideration to the importing Member, provided that a lower ratio should be acceptable where the evidence demonstrates that domestic sales at such lower ratio are nonetheless of sufficient magnitude to provide for a proper comparison."

167. After making adjustments, MBIE calculated a weighted average ex-factory normal value for HSS of RMB [REDACTED].

Tianjin Youfa

168. Tianjin Youfa sold HSS for home consumption in China to distributors and users on an [REDACTED] basis with customers to pick-up the goods when they are made. Tianjin Youfa provided a list of its sales in 2017 to all domestic customers. The sales information provided was for the [REDACTED] categories of HSS that are comparable in nominal bore and finish to those HSS products it exported to New Zealand.

169. Tianjin Youfa provided a breakdown of its costs to make and sell in 2017 for HSS sold on the domestic market in China by shape and finish. Costs were provided for each of the [REDACTED] categories of steel product comparable to those categories exported to New Zealand. The quantity of domestic sales of the comparable and like product was more than 5 per cent of the quantity of goods exported to New Zealand.

170. A comparison of the weighted average price for each category against the ex-factory cost for that category showed that [REDACTED] of HSS was sold at a loss. A comparison of the weighted average of sales of all comparable domestic sales to the weighted average cost to make and sell for all categories showed however that sales of like product were made at a profit of [REDACTED] per cent.

171. MBIE used the selling prices net of VAT to distributors and users in China in RMB as the base prices for normal values.

172. MBIE made adjustments for credit costs. The cost of credit was calculated based on the number of days between the invoice date and payment and an appropriate commercial interest rate of [REDACTED] per cent provided by Tianjin Youfa.

173. After making adjustments, MBIE calculated a weighted average ex-factory normal value for HSS of RMB [REDACTED].

4.4.2 Normal Value – Malaysia

174. For the purposes of this Provisional Measures Report, MBIE has used information provided in questionnaire responses from Alpine Pipe.

175. Alpine Pipe sold HSS for home consumption in Malaysia to distributors and users on a [REDACTED] basis with customers being able to [REDACTED] if requested. Alpine Pipe provided a list of its 2017 sales to all domestic customers. The sales information provided was for all products sold on the domestic market including some outside the subject goods description.

176. Alpine Pipe provided a breakdown of its costs to make and sell in 2017 for HSS sold on the domestic market as an average across all HSS products.

177. A comparison of the weighted average price for each category against the ex-factory cost showed on a weighted average basis Alpine Pipe was making sales at a loss. MBIE

calculated the volume of sales made at a loss on the domestic market as [REDACTED] per cent of HSS domestic sales. MBIE therefore excluded sales made at a loss when calculating normal value. The quantity of domestic sales made in the ordinary course of trade of the comparable and like product was more than five per cent of the quantity of goods exported to New Zealand.

178. MBIE made adjustments for inland transportation costs and cost of credit. The cost of credit was calculated based on the number of days between the invoice date and payment and an appropriate commercial interest rate of [REDACTED] per cent provided by Alpine Pipe.
179. After making adjustments, MBIE calculated a weighted average normal value for HSS of MYR [REDACTED].

4.5 Determination of Dumping

180. MBIE has established dumping margins for the POI by comparing the export prices established in section 4.3 and the normal values established in section 4.4. Comparisons of export prices and normal values and the calculation of dumping margins have been done on a product category (CHS or RHS), weighted-average to weighted-average basis for each exporter investigated based on the methodology set out in Article 2.4.2 of the AD Agreement. This means that while some transactions in some categories of HSS may have been dumped for certain exporters, in each case exporters were found not to be dumping when an overall weighted average dumping margin was calculated across all product categories. Article 2.4.2 allows dumping margins to be established on the basis of the comparison of weighted-average normal values with a weighted-average of prices of all comparable export transactions. It should be noted that a negative value indicates no dumping.

4.5.1 China – Margins of Dumping

181. MBIE has established dumping margins for the POI by comparing the export prices established in section 4.3 and the normal values established in section 4.4. For purposes of this Report, comparisons of export prices and normal values and the calculation of dumping margins have been done for all HSS on a weighted-average to weighted-average basis for each producer. The comparison is shown in the following table.

Table 4.1: Dumping Margins – China

Producer	Product Categories	Weighted average export price (RMB/tonne)	Weighted average normal value (RMB/tonne)	Dumping margin (%)
Dalian Steelforce	CHS, RHS	[REDACTED]	[REDACTED]	No dumping
Jinan Mech	CHS	[REDACTED]	[REDACTED]	No dumping

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Tianjin Youfa	CHS, RHS			No dumping
China				No dumping

4.5.2 Malaysia – Margins of Dumping

182. MBIE has used the same methodology to establish dumping margins for Malaysia as it used for China.

Table 4.2: Dumping Margins – Malaysia

Producer	Product Categories	Weighted average export price (RMB/tonne)	Weighted average normal value (RMB/tonne)	Dumping margin (%)
Alpine Pipe	RHS			11.4

4.6 Conclusions Relating to Dumping

183. Based on the analysis summarised above:

- imports of the subject goods from China are not being dumped
- imports of the subject goods from Malaysia are being dumped at a dumping margin of 11.4 per cent of the export price.

4.7 Further Proceedings

184. Section 11 of the Act requires the Minister, at any time before making a final determination, to terminate an investigation where the Minister is satisfied that there is insufficient evidence of dumping to justify proceeding with the investigation; or there is insufficient evidence that material injury to a New Zealand industry is being caused or threatened.

185. Article 5.8 of the AD Agreement requires that an investigation be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or injury to justify proceeding with the case. There shall be immediate termination in cases where the authorities determine that the margin of dumping is *de minimis*, or that the volume of dumped imports, actual or potential, is negligible. The *de minimis* level dumping is 2 per cent, expressed as a percentage of the export price. The volume of dumped imports is negligible if it represents less than 3 per cent of total imports of the like product.

186. As noted in the analysis above, the provisional conclusion reached is based on information available up to 7 June 2018, not all of which is verified. Subsequent information obtained by MBIE or made available to it, including information provided in supplementary questionnaires, verification visits or submissions by interested parties could provide a basis to modify this provisional conclusion during the remaining period of investigation.

5. Injury Investigation

5.1 Material Injury

187. The basis for considering material injury is set out in section 8(1) of the Act:

8. Material injury to industry—(1) In determining for the purposes of this Act whether or not any material injury to an industry has been or is being caused or is threatened or whether or not the establishment of an industry has been or is being materially retarded by means of the dumping or subsidisation of goods imported or intended to be imported into New Zealand from another country, the chief executive shall examine—

(a) The volume of imports of the dumped or subsidised goods; and

(b) The effect of the dumped or subsidised goods on prices in New Zealand for like goods; and

(c) The consequent impact of the dumped or subsidised goods on the relevant New Zealand industry.

188. MBIE interprets this to mean that injury is to be considered in the context of the impact on the industry arising from the volume of the allegedly dumped goods, their effect on prices, and the consequent impact on the industry. This is consistent with Article 3 of the AD Agreement.

189. The Act goes on to set out a number of factors and indices which the chief executive shall have regard to, although noting that this is without limitation as to the matters the chief executive may consider. These factors and indices include:

- the extent to which there has been or is likely to be a significant increase in the volume of dumped goods, either in absolute terms or relative to production or consumption
- the extent to which the prices of dumped goods represent significant price undercutting in relation to prices in New Zealand
- the extent to which the effect of the dumped goods is or is likely significantly to depress prices for like goods of New Zealand producers or significantly to prevent price increases for those goods that otherwise would have occurred
- the economic impact of the dumped goods on the industry, including actual or potential decline in output, sales, market share, profits, productivity, return on investments, or utilisation of production capacity; factors affecting domestic prices; the magnitude of the margin of dumping; and actual and potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments.

190. In addition, the chief executive must have regard to factors other than dumping which may be injuring the industry since, in accordance with Article 3.5 of the AD Agreement, it must be demonstrated that the dumped imports are, through the effects of dumping, causing material injury.

191. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry must be based on an examination of all relevant evidence before the authorities, who must examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, *inter alia*, the volumes and prices of non-dumped imports of the product in question, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.
192. The chief executive is also required to have regard to the nature and extent of importations of dumped goods by New Zealand producers of like goods, including the value, quantity, frequency, and purpose of any such importation.
193. MBIE has based its provisional assessment of injury on the information provided by NZ Steel in its application and in the verification visit, as well as on information provided by other interested parties.

Material Injury and Provisional Measures

194. Under section 16 of the Act the imposition of provisional measures requires that:
- at least sixty days have passed from the initiation of the investigation
 - the Minister has reasonable cause to believe that the goods are dumped
 - the Minister has reasonable cause to believe that by reason of the dumping the industry is suffering material injury
 - the Minister is satisfied that provisional measures are necessary to prevent material injury being caused during the remaining period of investigation.
195. In light of the provisional conclusion that at this point in the investigation there is no evidence of dumping of imports from China, the analysis of injury is based on imports of dumped HSS from Malaysia.

Basis for Injury Analysis

196. Throughout its application, NZ Steel emphasised that because of the approach it has taken to maintaining sales by meeting price competition, the injurious effects of allegedly dumped imports are manifested through the price effects, and the levels of injury are best addressed through adopting a counterfactual approach which looks at the position the industry would be in but for the dumping. As a consequence, NZ Steel focussed on the evolution of unit prices and per unit levels of revenue and profits as key indicators of injury.
197. NZ Steel argued that the counterfactual approach is best suited to the circumstances of the case, and provides evidence to support its claims that:

- injury is based upon selling price, which is mathematically and dynamically removed from sales revenue or EBIT, and the conditions of competition in the New Zealand market require a close focus on the price nexus, not on matters downstream
- it is inappropriate to focus on one element, such as absolute profit, which is two points removed from the price nexus, out of the sixteen referred to in section 8(2) of the Act, for decisive guidance on economic impact
- a very closely aligned case in Australia provides useful guidance to use of counterfactual analysis focusing on selling price
- coincidence analysis is at best a screening tool but its use is not required by the relevant treaties, and sole reliance on coincidence analysis may result in an incomplete assessment of material injury in the circumstances of the New Zealand HSS industry
- the use of coincidence/trend analysis in safeguards investigations is not a sound basis to support its use in dumping and subsidisation investigations
- on the basis of the supporting information and arguments provided by NZ Steel the counterfactual analysis is the most suitable in the circumstances of the New Zealand HSS industry, and has been used previously by MBIE.

MBIE Practice

198. MBIE interprets section 8(1) of the Act to mean that injury is to be considered in the context of the impact on the industry arising from the volume of the allegedly dumped goods, their effect on prices, and the consequent impact on the industry. This is consistent with Article 3 of the AD Agreement. A finding of injury does not require that both volume and price effects should have a consequent impact on the industry, but that impact must be attributable to at least one of volume or price effects, which also means that for injury to be determined any volume and/or price effects must result in adverse consequences for the industry.
199. The Act goes on to set out a number of factors and indices which the chief executive shall have regard to, although noting that this is without limitation as to the matters the chief executive may consider. These factors and indices include:
- the extent to which there has been or is likely to be a significant increase in the volume of dumped goods, either in absolute terms or relative to production or consumption
 - the extent to which the prices of dumped goods represent significant price undercutting in relation to prices in New Zealand
 - the extent to which the effect of the dumped goods is or is likely significantly to depress prices for like goods of New Zealand producers or significantly to prevent price increases for those goods that otherwise would have occurred
 - the economic impact of the dumped goods on the industry, including actual or potential decline in output, sales, market share, profits, productivity, return on

investments, and utilisation of production capacity; factors affecting domestic prices; the magnitude of the margin of dumping; and actual and potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments.

200. What this means for any analysis of claims of injury is that price undercutting on its own is not sufficient evidence of injury, since the material injury is manifested in the consequent impact on the industry of any volume and price effects of dumped goods. Also, MBIE is required to examine and report on all of the factors and indices set out in the Act and the extent to which they are attributable to the dumping of imports.

Basis for Analysis

201. In applying the requirements of section 10 of the Act when determining whether there is sufficient evidence that the New Zealand industry has suffered material injury, MBIE normally compares data for an injury factor against the data in a period unaffected by dumping (a coincidence analysis). This approach takes account of the clear wording of the Act in section 8(2)(d)(i) which refers to “actual and potential decline” in a series of factors, but also considers the trend experienced over the period for the factors concerned, and is not simply a binary comparison of the beginning and end points of the period investigated. In considering the extent of the effect of dumped imports in contributing to an “actual or potential decline,” the analysis can also be undertaken on the basis of the position that the industry would have been in but for the dumping, requiring inferences to be drawn as to the counterfactual situation.
202. MBIE notes that a counterfactual analysis needs to be considered in light of the whole of the available evidence. Unrealised sales revenue and profit is unlikely, by itself, to constitute material injury in an industry where profits are increasing. However, the application can be evaluated for evidence of injury to the industry caused by unrealised sales revenue and profit, in terms of the factors relating to economic impact of the allegedly dumped goods as set out in section 8(2)(d) of the Act. A counterfactual analysis also needs to take particular care in assessing the effect of factors other than the allegedly dumped or subsidised goods that might be injuring the industry. It should be noted that the WTO Appellate Body findings relating to the methodology to be used in an injury investigation in *Mexico – Anti-Dumping Measures on Rice*,¹² agreed that the AD Agreement did not prescribe a methodology that must be followed by an investigating authority in conducting an injury analysis and noted, “Thus, when, in an investigating authority's

¹² *Mexico – Definitive Anti-dumping Measures on Beef and Rice – Complaint with respect to Rice – AB-2005-6 – Report of the Appellate Body*, WT/DS295/AB/R, p.69.

methodology, a determination rests upon assumptions, these assumptions should be derived as reasonable inferences from a credible basis of facts, and should be sufficiently explained so that their objectivity and credibility can be verified.”

203. The injury analysis outlined in this section of this report has been conducted primarily on the basis of a ‘coincidence’ analysis where the industry’s performance is analysed over time. Where injury is not apparent from such an analysis, or where the applicant has claimed that a counterfactual analysis should be used, MBIE can have regard to the position the industry would have been in but for the dumping, but in doing so would carefully examine the assumptions made. In undertaking this assessment MBIE needs to consider the influence of factors other than the dumped goods in preventing price expectations from being achieved, as well as the level of dumping established. The assumptions derived as reasonable inferences from a credible basis of facts need to be identified and explained.

5.2 Import Volume Effects

204. This analysis is based on imports of HSS from Malaysia.
205. Using Customs data, MBIE has identified imports from Malaysia, in absolute terms and in relation to production and consumption in New Zealand, as shown in Table 5.1 below.

**Table 5.1: HSS imports by origin: Customs data
(Financial years, tonnes)**

	2012	2013	2014	2015	2016	2017
Malaysia	253	364	358	287	404	722
Other	17019	19707	18405	14540	15315	15604
Total Imports	17272	20071	18763	14826	15720	16326
NZ Steel sales	Index prev. yr	982	989	820	1008	947
NZ market	Index prev. yr	1054	965	808	1030	986
Change on previous year - tonnes:						
Malaysia		144%	98%	80%	141%	179%
Other		116%	93%	79%	105%	102%
Total Imports		116%	93%	79%	106%	104%
NZ Steel sales		98%	99%	82%	101%	95%
NZ market		105%	96%	81%	103%	99%
Malaysia imports as percentage of						
Total imports	1.5%	1.8%	1.9%	1.9%	2.6%	4.4%
NZ Steel sales						
NZ market						

Confidential summary: Shaded figures are index of previous year; full deletions protect commercial-in-confidence information

206. The table shows that in **absolute** terms the volume of imports from Malaysia has generally increased over the full period, with a sharp increase in 2017. Other imports have decreased over the period. Imports from Malaysia exceeded the negligible import level only in 2017. Article 5.8 of the AD Agreement provides that dumped imports are to be

regarded as negligible if they account for less than 3 per cent of all imports of the subject goods.

207. Relative to New Zealand **production**, imports from Malaysia remained consistently low in 2013-2015, and then increased steadily in 2016 and 2017. In 2017, Malaysian imports represented 1.2 per cent of domestic production as opposed to 1.5 per cent in 2012-2015.
208. As a percentage of domestic **consumption** (the New Zealand market), imports from Malaysia have followed a similar pattern, but even with the rise in imports over the period, the share of domestic consumption in 2017 was less than 1.2 per cent.
209. MBIE concludes that on the basis of information available to this point in the investigation, there has been an increase in the volume of imports of allegedly dumped goods from Malaysia in absolute terms and in relation to production and consumption in New Zealand, but the levels are very low, and the extent to which any injury relating to the volume of imports can be attributed to the dumping of imports of HSS from Malaysia is addressed in section 6.

5.3 Price Effects

210. In its application, NZ Steel explained that its pricing strategy is based on maintaining market share by responding to prevailing HSS price offers and import product flow. NZ Steel pricing to the merchant distributor and end user market is based on import parity pricing and is reviewed quarterly to ensure competitiveness. A premium is applied over import pricing to reflect the benefits of local supply and NZ Steel's market offer, including short lead times, order flexibility, small order item quantities, product quality, technical service and customer service, and New Zealand currency pricing.

5.3.1 Price Undercutting

211. Price undercutting refers to the extent to which the prices of the subject goods are lower than prices in New Zealand for like goods of New Zealand producers. Prices are compared at the point that the imported goods first compete with the goods made in New Zealand. Price undercutting is not in itself a determinant of the existence or extent of injury, i.e. the margin of price undercutting is not a measure of the extent of the economic impact on the industry. That impact is to be measured, *inter alia*, in terms of the factors set out in section 8(2)(d) of the Act, outlined in section 5.4 of this Report.
212. In its application NZ Steel noted that the level of trade at which imported HSS first competes with domestically-produced HSS has been considered by MBIE as the relevant level of trade for the purpose of assessing price undercutting. The relevant price levels are ex-wharf for imports and NZ Steel's ex-factory price (i.e. its free-into-store (FIS) price less freight).
213. In its application NZ Steel developed price undercutting tables based on the information available to it, and noted that the figures for the 2017 quarters reflected abnormally lower

ex-works values for NZ Steel because it needed to absorb higher freight costs to South Island buyers resulting from the Kaikōura earthquake in November 2016. Also, NZ Steel considered that the CIF prices for China for the same two quarters were unusually high and were believed to be incorrect. NZ Steel considered that these two factors contributed to lower price undercutting margins in 2017.

214. MBIE prepared the following table on the basis of Customs data and data provided by NZ Steel, including information from importer questionnaire responses for NZ-side destination costs.

Table 5.2: Price Undercutting – Malaysia
Customs data, average values
(NZD/MT, %)

	2011	2012	2013	2014	2015	2016	2017
Malaysia							
NZ Steel							
Price Undercutting NZD							
Price Undercutting %	10-15%	5-10%	>15%	10-15%	<5%	>15%	10-15%

Confidential summary: Undercutting shown in 5% tranches; full deletions protect commercial-in-confidence information

215. This table shows evidence that there was price undercutting of NZ Steel’s average selling prices by the average prices of HSS imported from Malaysia. The level of price undercutting in 2017 is less than the margin of dumping, but MBIE will be undertaking a more detailed examination of import shipments for the Essential Facts and Conclusions Report, based on information from the verification visit to the Malaysian exporter.
216. MBIE concludes that on the basis of information available to this point in the investigation there is price undercutting to which dumped imports from Malaysia are contributing.

5.3.2 Price Depression

217. Price depression occurs where prices achieved by the New Zealand manufacturers are lower than those achieved in a period unaffected by allegedly dumped or subsidised goods. Price depression is not in itself a determinant of the existence or extent of injury. There must be a consequent impact on the industry, measured primarily in terms of the factors set out in section 8(2)(d) of the Act.
218. The following table shows NZ Steel’s average domestic selling prices for HSS from 2011 to 2017, with index values based on 2011.

**Table 5.3: Price Depression
(NZD per tonne)**

	Revenue NZD/MT	Index 2011=1000
2011		1000
2012		948
2013		913
2014		889
2015		809
2016		731
2017		790

Confidential summary: Index summarises commercial-in-confidence information

219. Table 5.3 shows that NZ Steel’s average selling price decreased over the whole period with a slight recovery in 2017. By 2017, NZ Steel’s average selling price had dropped to 79 per cent of its 2011 average selling price.
220. MBIE concludes that on the basis of information available to this point in the investigation NZ Steel has experienced price depression, in that average prices have decreased significantly over the period.

5.3.3 Price Suppression

221. Price suppression occurs when New Zealand producers are unable to increase prices, for example, to recover cost increases. Price suppression is not in itself a determinant of the existence or extent of injury. There must be a consequent impact on the industry, measured in terms of the factors set out in section 8(2)(d) of the Act.
222. MBIE has compared NZ Steel’s total costs as a percentage of sales revenue from 2011 to 2017. The following table shows the resulting calculations.

**Table 5.4: Price Suppression
(NZD per tonne)**

	Revenue NZD/MT	Cost of Production NZD/MT	% of Revenue <i>Indexed</i>
2011			1000
2012			1044
2013			1072
2014			1154
2015			1292
2016			1382
2017			1277

Confidential summary: Indexed (2011=1000) summarises table

223. Table 5.4 shows that NZ Steel's total costs per unit fluctuated over the period but have not increased significantly. However, average sales revenue has decreased significantly, and costs as a percentage of sales revenue per unit consequently increased over the period to 2016, and especially between 2014 and 2016, but declined in 2017.
224. MBIE concludes that on the basis of information available to this point in the investigation NZ Steel has experienced price suppression to the extent that average unit revenue did not reflect the extent of the same margins over costs per unit achieved in the earlier part of the period being examined.

5.3.4 Conclusion on Price Effects

225. Average prices of HSS imports from Malaysia show undercutting of NZ Steel's average selling prices over most of the period 2011 to 2017, and that price depression and price suppression occurred over the same period.
226. MBIE concludes that on the basis of information available to this point in the investigation the dumping of small volumes of HSS imported from Malaysia has contributed to the price effects experienced by NZ Steel.
227. As noted earlier, the price effects examined above are not in themselves a determinant of injury. There must be a consequent impact on the industry, in particular when measured, *inter alia*, in terms of the factors and indices set out in section 8(2)(d) of the Act. Injury caused to the New Zealand industry is assessed in terms of the economic impact in the following section of the report.

5.4 Consequent Impact

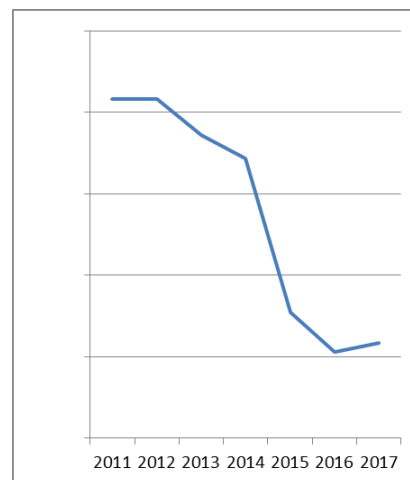
5.4.1 Output and Sales

228. Movements in sales revenue can reflect changes in output/sales volume and prices of goods sold. Dumped imports can affect both of these factors through increased supply of goods to the market and through price competition.
229. NZ Steel provided sales volume and sales revenue information covering 2011 to 2017. NZ Steel has submitted that its strategy is to retain volume by competing on price (plus other assured quality and service elements). Injury effects are therefore reflected in sales revenue decreases and loss of profits, rather than in volume effects.
230. The following charts illustrate the sales volume and sales revenue information provided by NZ Steel.

**Chart 5.1: NZ Steel Output
MT**



**Chart 5.2: NZ Steel Sales
NZD000**



Confidential summary: Y axis values deleted; minimum value not 0.

231. The information clearly shows that NZ Steel’s annual output and sales declined over the whole period, following a slight increase in volumes between 2011 and 2012, but with static sales revenue over this period. Both volume and value of sales declined sharply from 2013 before revenue recorded some recovery in 2017.
232. MBIE concludes that on the basis of information available to this point in the investigation NZ Steel experienced declines in output and sales over the period of investigation. The extent to which these declines can be attributed to dumped imports of HSS from Malaysia is addressed in section 6.

5.4.2 Market Share

233. Analysis of market share must consider changes in the size of the total market. A decline in the domestic industry’s market share when the total market is expanding will not necessarily indicate that material injury is being caused, particularly if the domestic industry’s sales are also growing, because the New Zealand industry is not entitled to a particular market share.
234. The following charts illustrate market share information for HSS from 2011 to 2017 using Customs data and NZ Steel sales (information on sales by other New Zealand producers across the whole period reviewed is not included).

Chart 5.3 Market Share (MT)

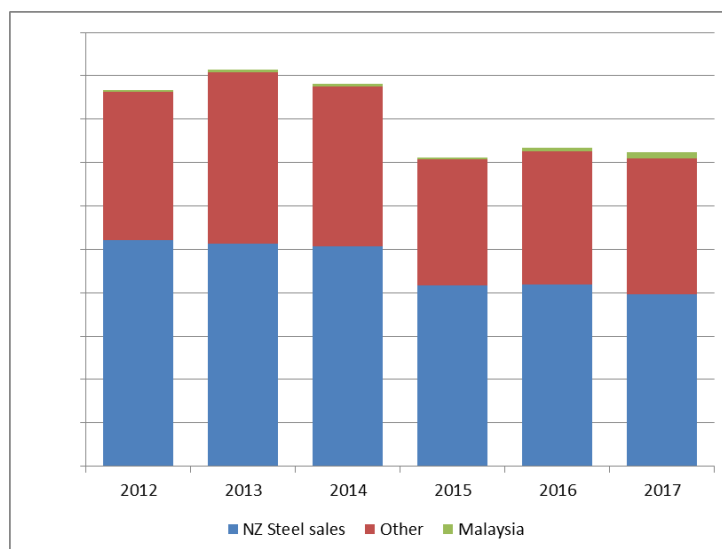
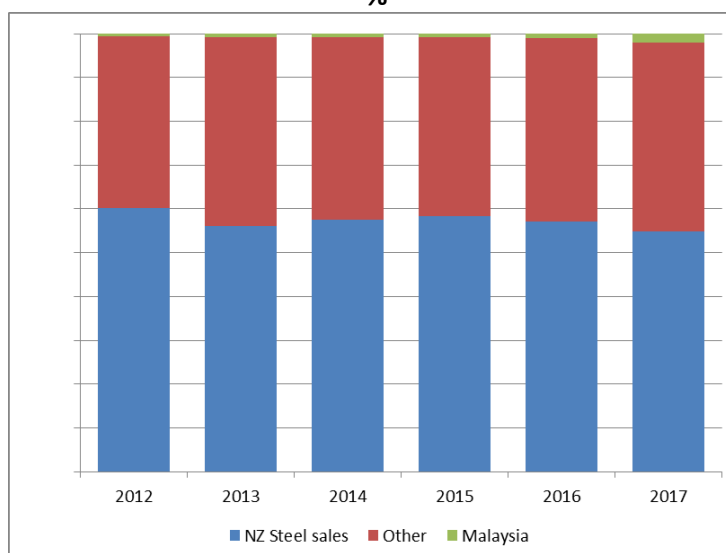


Chart 5.4: Market Share %



Confidential summary: Y axis values removed

235. The charts show that the domestic industry’s market share declined over the period 2012 to 2017, operating within a range of [REDACTED]. The decrease in market share in 2013 reflected an increase in imports from countries other than Malaysia. The Malaysian market share increased significantly in relative terms over the period, and particularly in 2016 and 2017, but even so had reached only [REDACTED] per cent in 2017, and the change in Malaysia’s market share was less than the changes in NZ Steel’s market share.
236. MBIE concludes that on the basis of information available to this point in the investigation there is not a significant decline in market share that can be attributed to dumped imports

of HSS from Malaysia, although such imports may have contributed to the changes experienced.

5.4.3 Profits

237. Dumped or subsidised imports can affect gross profit and net profit via the impact on sales prices and volumes.
238. NZ Steel claimed that it has suffered material injury against profit as a result of the presence in the New Zealand market of unfairly traded imports, induced in particular by price suppression. NZ Steel argued that its unrealised higher selling price is necessarily reflected in the economic consequence of foregone EBIT. NZ Steel also noted that material injury arises from significantly lower per unit profitability in 2016 and 2017 compared with previous years.
239. NZ Steel illustrated the extent of the injury by applying the differential in EBIT between 2011 and later years to the volume of 2017 sales. NZ Steel used a similar approach to identify significantly adverse effects on gross profits.
240. MBIE has constructed the following table from NZ Steel’s EBIT figures from 2011 to 2017.

**Table 5.5: Profit and Profitability
(NZD000, %)**

	2011	2012	2013	2014	2015	2016	2017
Sales revenue		slight increase	decrease	slight decrease	large decrease	decrease	slight increase
EBIT		large decrease	large decrease	large decrease	large decrease	large decrease	large increase
EBIT/MT		large decrease	large decrease	large decrease	large decrease	large decrease	large increase
EBIT as % of revenue		decrease	decrease	decrease	decrease	decrease	increase

Confidential summary: Summarised results compared to previous year

241. All measures of profit and profitability declined significantly over the period.
242. MBIE concludes that on the basis of information available to this point in the investigation NZ Steel has experienced a significant decline in profit, as measured by EBIT, and in profitability. Dumped imports of HSS from Malaysia may have contributed to reduced prices and revenue, while the effect of non-dumped imports is addressed in section 6 below.

5.4.4 Productivity

243. Productivity is the relationship between goods produced and the inputs required to manufacture those goods. Productivity is affected by output/sales and capacity utilisation levels.
244. NZ Steel noted that it does not consider material injury to be related to productivity, and any injury to productivity will be less than the effects of unfairly traded goods on HSS selling price and profitability.

245. MBIE concludes that on the basis of information available to this point in the investigation there is no adverse economic impact relating to productivity that can be attributed to dumped imports from Malaysia.

5.4.5 Return on investment (ROI)

246. An analysis of return on investment measures profit against the value of the investment in a business. Changes in return in investment may impact the ability to retain current investment or attract new investment. Declines in return on investment can result from a decline in profit or an increase in the level of investment within the business.

247. NZ Steel claims that it has suffered an economic impact in the form of a diminished return on investments, as evidenced by the level of EBIT expressed as a return on assets. The following table is based on information from NZ Steel for financial years FY2011 to FY2017.

**Table 5.6: Return on Investment
(NZD000, %)**

	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017
EBIT		large decrease	large decrease	decrease	large decrease	decrease	large decrease
Fixed assets		decrease	increase	decrease	large decrease	decrease	slight increase
EBIT % Fixed assets		decrease	large decrease	decrease	large decrease	large decrease	decrease

Confidential summary: Summarised results compared to previous year

248. NZ Steel has suggested that an alternative assessment could incorporate the undercutting suppressive effect, which would indicate a potential for a 23 per cent improvement in ROI compared with the actual outcome.

249. MBIE concludes that on the basis of the information available to this point in the investigation NZ Steel has experienced a significant decline in return on investments. The extent to which this decline can be attributed to dumped imports of HSS from Malaysia depends on the causal link between such imports and the effect on prices and profits.

5.4.6 Utilisation of production capacity

250. The utilisation of production capacity reflects changes in production volumes or changes in capacity. A decline in production volumes will normally lead to a higher cost per unit due to increased fixed overheads per unit. This will lead to a decrease in profit level, unless offsetting savings are found elsewhere.

251. NZ Steel has stated that it does not consider production capacity and any injury to production capacity to be a material injury factor in the particular circumstances of this case. During the verification visit NZ Steel advised that it was steadily increasing the efficiency of its Pipe Mill, but it was difficult to provide a meaningful production capacity figure, since the facility produced a range of pipe and RHS sizes, and weight would depend on the range of sizes and wall thicknesses produced. Also, the company produced to order and throughput was largely based on consumer demand.

252. MBIE concludes that on the basis of information available to this point in the investigation there is no adverse economic impact relating to the utilisation of production capacity by NZ Steel as a result of dumped imports of HSS from Malaysia.

5.4.7 Factors affecting domestic prices

253. The Act lists this matter as one of the various factors and indices to which the chief executive must have regard to when assessing the economic impact of dumped goods on the industry. MBIE examines this factor in the context of the economic impact of dumped goods on the industry.
254. NZ Steel considered that the primary factor affecting domestic prices is the price of the unfairly traded imports.
255. MBIE's consideration of the price effects of imports is summarised above in section 5.3. The requirements in relation to this factor go more broadly to encompass NZ Steel's pricing policy, and the New Zealand and global market situations.
256. NZ Steel has outlined its import parity pricing policy as being based on [REDACTED] reviews of market offer feedback from New Zealand distributors of imported products, and pricing from international steel review publications and from BlueScope overseas offices. Prices are converted to NZD free into store (FIS) levels by adding freight charges, port service charges and handling costs, import duty where applicable, and domestic cartage to distributor's store to determine a nominal FIS price. A premium is then added to reflect the benefits of local supply, and the outcome is a NZ Steel distributor price, less any rebates, to be compared with the nominal FIS import price, and a market price adjustment is made if necessary to reflect any change in import pricing, or any movement in exchange rates.
257. Other matters affecting domestic prices include the impact of events in New Zealand, such as the Kaikōura earthquake, which is identified in the application as having affected NZ Steel's sales in the South Island.
258. MBIE notes that in light of NZ Steel's import parity pricing policy, prices of imports clearly affect domestic prices, and such effects and the impact of domestic and global factors influencing prices are being addressed in the investigation. MBIE concludes that on the basis of the information available to this point in the investigation, prices in New Zealand are significantly affected by prices of imports, including the prices of dumped imports of HSS from Malaysia.

5.4.8 Magnitude of the margin of dumping

259. Section 8(2)(d)(iii) of the Act refers to the magnitude of the margin of dumping as a factor the chief executive is to have regard to. The magnitude of the margin of dumping can be an indicator of the extent to which injury can be attributed to dumping.
260. MBIE has established that the margin of dumping for HSS imported from Malaysia is 11.4 per cent, and has established that there is no dumping of HSS from China. The margin of

dumping of HSS from Malaysia is not insignificant, particularly when compared with the level of price undercutting established.

261. MBIE concludes that on the basis of the information available to this point in the investigation the magnitude of the margin of dumping of HSS imported from Malaysia could be contributing to the price effects attributable to dumped imports being experienced by NZ Steel.

5.4.9 Other Adverse Effects

Cash Flow

262. MBIE is required to have regard to the economic impact of dumped goods on the industry through actual and potential effects on cash flow. Cash flow is the total amount of money being transferred into and out of a business, especially as it affects liquidity, and provides an indication of the ability of producers to self-finance their activities.
263. NZ Steel claimed that it has suffered a material-level economic impact from unfairly traded imports as diminished cash flow as a result of the presence in the New Zealand market of unfairly traded goods. NZ Steel attributes the effects on cash flow to induced price suppression as a result of unrealised higher prices.
264. The following table is based on information provided by NZ Steel covering financial years FY2011 to FY2017. Cash flow is based on EBIT plus depreciation.

**Table 5.7: Cash flow
NZD000**

	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017
Cash flow		large decrease	large decrease	decrease	large decrease	decrease	large decrease
Change on previous year			large decrease	large increase	large decrease	large increase	large decrease

Confidential summary: Summarised results compared to previous year

265. The information provided by NZ Steel indicates that cash flow has been declining for most of the period, and has been negative since FY2015.
266. MBIE concludes that on the basis of the information available to this point in the investigation NZ Steel has experienced a significant negative effect on cash flow, but the extent to which these effects can be attributed to the dumping of HSS from Malaysia depends on the causal link between the price effects of those imports and the revenue and profit achieved by NZ Steel.

Inventories

267. MBIE is required to have regard to the economic impact of dumped goods on the industry through actual and potential effects on inventories.
268. NZ Steel has noted that the product is made to order so inventories are not considered to be a useful material injury factor in the particular circumstance of this case.

269. MBIE concludes that on the basis of the information available to this point in the investigation there is no adverse economic impact relating to inventories that can be attributed to the dumping of imports from Malaysia.

Employment and Wages

270. MBIE is required to have regard to the economic impact of dumped goods on the industry through actual and potential effects on employment and wages.

271. NZ Steel does not consider that employment and wages have a material economic impact.

272. MBIE concludes that on the basis of the information available to this point in the investigation there is no adverse economic impact relating to employment and wages that can be attributed to the dumping of imports from Malaysia.

Growth and Ability to Raise Capital and Investments

273. NZ Steel has observed that the availability of unfairly traded HSS on the New Zealand market adversely affects growth prospects for its business and for any requests that NZ Steel might make to its owners for more capital. NZ Steel has suggested that the unremedied degree of economic damage from unfairly traded imports is inevitably considered by NZ Steel's parent company when growth and further investment in New Zealand are being considered. NZ Steel notes that its potential source of growth funding has a choice to direct capital to geographies where unfairly traded imports of HSS are being trade-remedied.

274. NZ Steel did not provide any specific evidence in support of these observations.

275. MBIE concludes that on the basis of the information available to this point in the investigation there is no adverse economic impact relating to growth and the ability to raise capital that can be attributed to the dumping of imports from Malaysia.

5.4.10 Conclusion on Consequent Impact

276. MBIE has concluded that on the basis of information available to this point in the investigation:

- there has been an increase in the volume of imports of allegedly dumped goods from Malaysia in absolute terms and in relation to production and consumption in New Zealand, but the levels are very low
- the dumping of the small volumes of HSS imported from Malaysia has contributed to the price effects experienced by NZ Steel
- NZ Steel has experienced declines in output and sales over the period of investigation
- NZ Steel has not experienced a significant decline in market share that can be attributed to dumped imports from Malaysia
- NZ Steel has experienced a significant decline in profit, as measured by EBIT, and in profitability

- NZ Steel has experienced a significant decline in return on investments and cash flow
- there has been no adverse economic impact on NZ Steel relating to productivity, utilisation of production capacity, inventories, employment and wages, growth and the ability to raise capital and investment
- In light of NZ Steel's import parity pricing policy, prices of imports clearly affect domestic prices, and the magnitude of the margin of dumping may be affecting prices.

277. Overall, MBIE concludes that on the basis of the information available to this point in the investigation the dumping of imports of HSS from Malaysia has had an economic impact on the New Zealand industry.

5.5 Conclusions Relating to Material Injury

278. Material injury is not defined in either the Act or the AD Agreement, but rather is the level of injury which can be demonstrated by an objective and unbiased investigating authority on the basis of an assessment of the factors set out in section 8 of the Act, and in the context of the circumstances of the industry concerned.

Import Volumes

279. MBIE concludes that there has been an increase in the volume of imports of allegedly dumped goods from Malaysia in absolute terms and in relation to production and consumption in New Zealand, but the actual volume is small.

Price Effects

280. MBIE concludes that the average prices of dumped HSS imports from Malaysia have undercut NZ Steel's average selling prices, and that there is price depression and price suppression.

Consequent Economic Impact

281. MBIE concludes that there has been a consequent impact on NZ Steel in relation to a number of injury factors arising from the price effects of allegedly dumped imports of HSS from Malaysia. These injury factors include a decline in sales volume and sales revenue, a significant decline in profit and return on investments and a negative effect on cash flow.

Overall Injury Conclusions

282. MBIE concludes that there is reasonable cause to believe that material injury to an industry has been or is being caused by means of the dumping of HSS imported from Malaysia.

6. Causal Link

283. Sections 8(1) and 8(2) of the Act set out the matters to be examined and considered in determining whether or not material injury to an industry has been or is being caused by the dumping of goods.
284. Sections 8(2)(e) and (f) of the Act provide that the chief executive shall have regard to factors other than the dumped goods which have injured, or are injuring, the industry, including—
- the volume and prices of goods that are not sold at dumped prices
 - contraction in demand or changes in the patterns of consumption
 - restrictive trade practices of, and competition between, overseas and New Zealand producers
 - developments in technology
 - export performance and productivity of the New Zealand producers, and
 - the nature and extent of importations of dumped goods by New Zealand producers of like goods, including the value, quantity, frequency and purpose of any such importations.
285. Article 3.5 of the AD Agreement provides:

It must be demonstrated that the dumped imports are, through the effects of dumping, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter alia, the volumes and prices of non-dumped imports of the product in question, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

6.1 Injury Attributable to Dumped Imports

286. MBIE's assessment of the injury factors in section 5 includes a discussion of the causal relationships of dumped imports on volume and price effects and the consequent impact on the domestic industry, on the basis of the dumping levels established.
287. MBIE has established that there is dumping of imports of HSS from Malaysia, and has concluded that:
- the dumping of the small volumes of HSS imported from Malaysia has contributed to the price effects experienced by NZ Steel

- any price effects attributable to the dumping of HSS from Malaysia may be contributing to the significant decline in profit, as measured by EBIT, and in profitability and the significant decline in return on investments and cash flow being experienced by NZ Steel
- in light of NZ Steel’s import parity pricing policy, prices of imports clearly affect domestic prices, and the magnitude of the margin of dumping may be affecting prices.

6.2 Other Causes of Injury

288. Sections 8(2)(e) and (f) of the Act set out matters that the chief executive is required to examine in considering whether factors other than dumping may be causing injury to the industry. In addition to those factors, the chief executive may consider other factors that are relevant to the examination of causality.

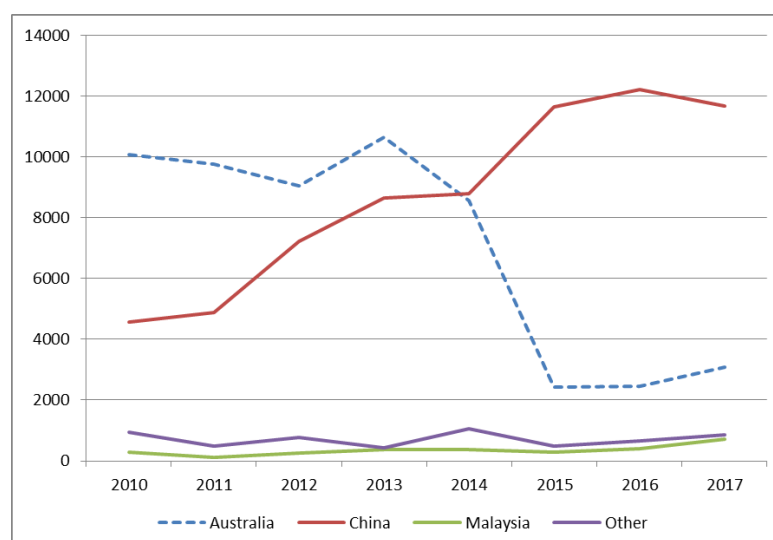
289. In light of the findings relating to price effects, revenue and profits, the industry is experiencing adverse effects which may be attributable to the dumped imports, but there may be other factors in play which are also affecting the position of the domestic industry.

6.2.1 Non-Dumped Imports

290. Section 8(2)(e)(i) of the Act refers to the volume and prices of goods that are not dumped.

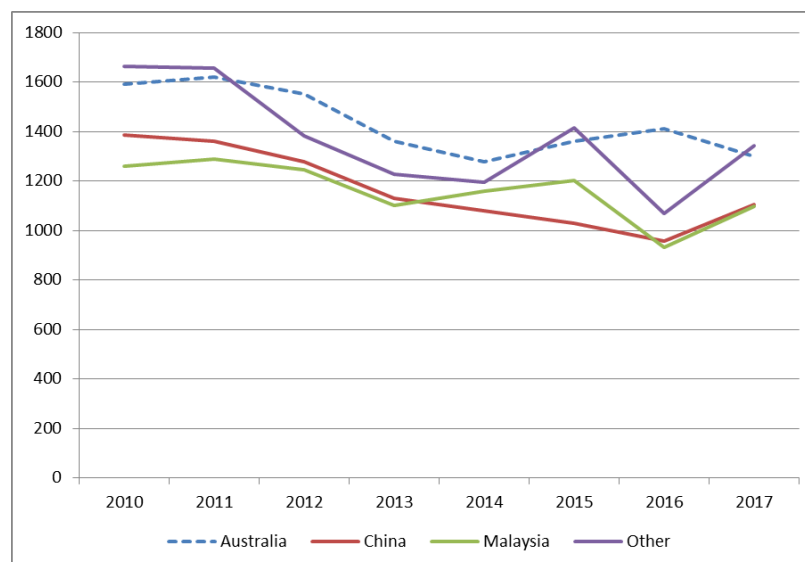
291. The following chart illustrates the trading pattern for HSS, and demonstrates that imports are dominated by Australia and China, with Malaysia and other suppliers providing only a very small share of the market. Imports from Australia declined significantly in 2015, while imports from China increased, but not to the full extent of the Australian decrease.

Chart 6.1: Steel HSS imports: Source Customs (MT)



292. Average unit values from the main suppliers, based on Customs data for average VFD totals for each country, are illustrated below. This measure can be only indicative of trends because it does not take account of price variations because of different sizes of product, time of shipment, and other factors. However, the chart does illustrate an overall downward trend in prices, and the similarity of price trends from China, Malaysia and other suppliers.

Chart 6.2: Steel HSS imports (VFD/MT)



293. Current average unit values from Malaysia are lower than those from China, which are not dumped. This indicates that any price effects of the dumped imports from Malaysia are not attributable to other imports.

Subsidised Imports

294. MBIE is concurrently investigating allegations of subsidisation of HSS from China. In that investigation, the conclusion reached on the basis of the information available to this point in the investigation is that there was no subsidisation of HSS from China during the period of investigation which exceeded the *de minimis* threshold.

6.2.2 Demand and Consumption

295. Section 8(2)(e)(ii) of the Act refers to contraction in demand or changes in the patterns of consumption. Changes in the pattern of consumption or a reduction in demand can also be a potential cause of material injury to the New Zealand industry.

296. NZ Steel made no comment on these matters.

297. MBIE notes that overall demand for steel products in New Zealand, including HSS, is likely to be related to general economic activity, but there is no basis to conclude that changes in

the pattern of demand and consumption have contributed to any adverse effects for NZ Steel.

6.2.3 Trade Practices

298. Section 8(2)(e)(iii) of the Act refers to restrictive trade practices of, and competition between, overseas and New Zealand producers.
299. NZ Steel has made no comment on these matters.
300. Restrictive trade practices of overseas or New Zealand producers, such as price ceilings, other statutory measures, or exclusive dealer arrangements, can negatively affect the financial position of New Zealand manufacturers when they are not the beneficiaries of the restrictions. Competition between overseas and New Zealand producers of HSS can be a cause of material injury independent of any dumping. For example, the existence of a price war or the constant threat of new competitors to the New Zealand market can cause a fiercely competitive environment where it is difficult for a New Zealand manufacturer to make a positive return. While this will generally be reflected in the price effects outlined in section 5.3 above, there may be factors other than straight pricing that can reflect competition between domestic and imported goods.
301. While there is no evidence of any restrictive trade practices which might be operating to advantage imports or disadvantage the New Zealand industry, there is clearly significant competition in the market, with New Zealand buyers of HSS conscious of the prices available to them from suppliers in other countries, but there is no evidence of this going beyond price effects.

6.2.4 Developments in Technology

302. Section 8(2)(e)(iv) of the Act refers to developments in technology. Technological developments can have an adverse impact on the New Zealand industry. Such developments could relate to the like goods themselves, through the development of alternative products or processes, or to the plant and production processes used to manufacture them. It is also possible that if a company chooses to be an early adopter of new technology, the cost of being the first to market with a technology can carry a cost that outweighs the return, while a late adopter may not be able to recapture lost markets.
303. NZ Steel has made no comment on these matters.
304. MBIE is not aware of any developments in technology that could be affecting the New Zealand HSS industry.

6.2.5 Exports of New Zealand Producers

305. Section 8(2)(e)(v) of the Act refers to the export performance and productivity of the New Zealand producers. Export performance and productivity of the New Zealand industry can be a cause of injury if its export performance is at the expense of its domestic performance.

306. NZ Steel advised that in FY2017 HSS export sales amounted to [REDACTED] MT out of total sales of [REDACTED] MT. Export-related costs are excluded from the financial data provided to support the application.
307. MBIE concludes that there is no evidence to suggest that NZ Steel's export performance contributes to any injury.

6.2.6 Imports by the Industry

308. MBIE is required to assess the nature and extent of importation of dumped goods by New Zealand producers of like goods, including the value, quantity, frequency and purpose of any such importations.
309. Customs data do not show any imports of subject goods by NZ Steel during 2017.

6.2.7 Other Factors

310. MBIE has sought to identify any other factors that could be contributing to the injury experienced by NZ Steel. One such factor could be the situation of the global steel market and the effect on HSS prices, through competition for HSS itself and also in relation to prices for the main input, HRC.

Global Steel Market

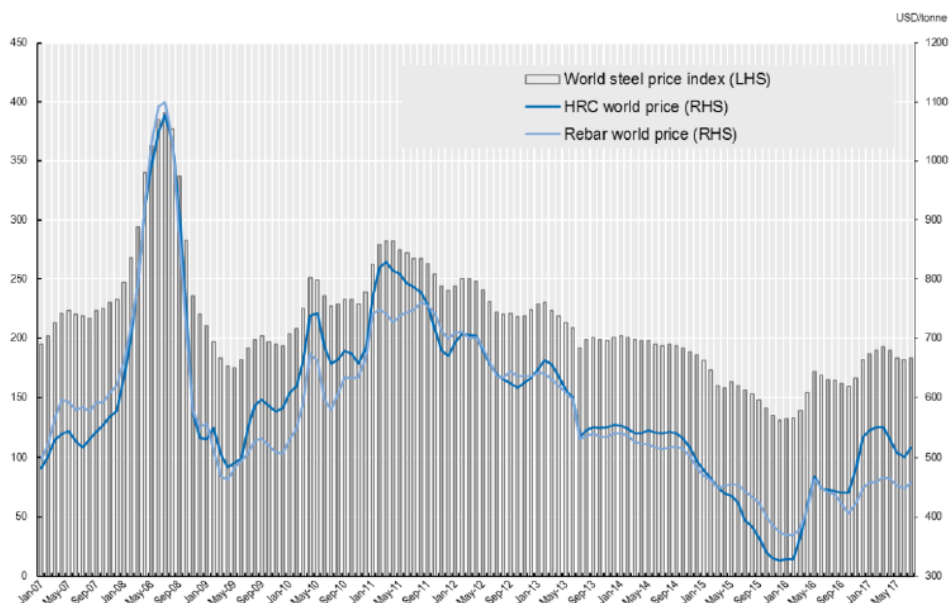
311. OECD reports on the global steel market¹³ state:

The modest uptake in steel demand during the year 2016 has seen prices respond rapidly, even in a context of ample supply. The world steel price index, which had been trending downwards since the second quarter of 2011, reached a floor during December 2015, and seems to be climbing back, standing now around its 2014 levels. However, during the first half of 2017, world hot-rolled coil (HRC) prices have decreased by 52% and rebar prices by 22% from their levels at the end of 2016. This correction in steel prices could reflect previous expectations about a rapid adjustment of supply to demand that were not fully met. In June 2017, the world average HRC price stood at USD 501 (up from USD 449 in June 2016) and the world rebar price at USD 448 per tonne (up from USD 442 in June 2016). However, it is important to note that prices remain below those registered during the recent financial crisis.

312. The following chart, taken from the Q4 2017 OECD report, shows that steel prices in the first half of 2016 were at historically low levels, but have begun to recover.

¹³ *Steel Market Developments:Q4 2017*, OECD, 2018, available through <http://www.oecd.org/sti/ind/steel-market-developments.htm>.

**Chart 6.4: World Steel Prices (from OECD)
USD/tonne, July 2017**



Source: Platts Steel Business Briefing.

313. It is clear that low international prices for steel generally and for HRC in particular in 2015-2016, whether or not exacerbated by subsidisation or dumping, were a significant factor in the prices that NZ Steel could achieve for HSS. This is a consequence of its pricing policy and the extent to which international price pressure played a significant role in pricing decisions.
314. MBIE is satisfied that the international market situation for steel in 2015-2016 was a factor contributing to the adverse effects described in section 5 above. However, MBIE considers that this does not mean that injury cannot also be attributed to the effect of dumped imports of HSS from Malaysia.

6.3 Conclusions on Causal Link

315. MBIE concludes that there is a causal link between dumped imports of HSS from Malaysia and the price effects and consequent impact on the domestic industry, and that the effect of other possible causes of injury has not been attributed to the dumped imports.

7. Imposition of Provisional Measures

7.1 Conditions

316. As outlined in section 1.3 above, the imposition of provisional measures requires that:

- at least sixty days have passed from the initiation of the investigation
- the Minister has reasonable cause to believe that the goods are dumped
- the Minister has reasonable cause to believe that by reason of the dumping the industry is suffering material injury
- the Minister is satisfied that provisional measures are necessary to prevent material injury being caused during the remaining period of investigation.

Time Period

317. The first of these conditions has been met since the sixty day period ended on 7 June 2018.

Dumping

318. MBIE has established that on the basis of the information available to this point in the investigation imports of HSS from Malaysia are dumped at a level of 11.4 per cent.

Material Injury

319. MBIE has concluded that the average prices of dumped HSS imports from Malaysia have undercut NZ Steel's average selling prices, and that there is price depression and price suppression. MBIE has also concluded that there has been a consequent impact on NZ Steel in relation to a decline in sales volume and sales revenue, a significant decline in profit and return on investments and a negative effect on cash flow.

320. MBIE further concludes that there is a causal link between dumped imports of HSS from Malaysia and the price effects and consequent impact on the domestic industry, and that the effect of other possible causes of injury has not been attributed to the dumped imports.

Need for Provisional Measures

321. While the level of imports from Malaysia is small, relative to total imports and to the total New Zealand market, the level of dumping, at 11.4 per cent is not insignificant, and is greater than the level of price undercutting of imports from Malaysia established by MBIE. This indicates that the imposition of provisional measures would contribute to removing the injurious effect of the dumping of imports from Malaysia, and could therefore prevent material injury being caused by imports of dumped HSS from Malaysia during the remaining period of the investigation.

7.2 Provisional Measures

322. Section 16(1) of the Act provides that if the Minister is satisfied that action under the section is justified, the Minister may, by notice, give a provisional direction that payment of duty in respect of the goods shall be secured in accordance with sections 156 and 157 of the Customs and Excise Act 1996.
323. The amount of provisional duty imposed may not exceed the margin of dumping, in this case 11.4 per cent, reflecting the difference between the normal value of the goods and the export price, as established in accordance with the Act.
324. Section 16(3) of the Act provides that provisional measures cease to have effect from the date of the determination made by the Minister under section 10H(1) following a public interest determination, or if no such determination is made, the date of the determination made under section 10D(1) relating to dumping causing material injury.

7.3 Conclusions

325. MBIE considers that in the circumstances summarised above, there is reasonable cause to believe that HSS imported from Malaysia is being dumped and that the dumping is causing material injury to a New Zealand industry. MBIE further concludes that the imposition of provisional measures is necessary to prevent material injury being caused during the remaining period of investigation, and that the level of the provisional direction to impose a duty on imports of HSS from Malaysia should be set at 11.4 per cent of the value for duty.
326. MBIE considers that in light of the provisional conclusion that imports of HSS from China are not dumped, there is no basis to consider the imposition of provisional measures on imports of HSS from China.

8. Recommendation

327. MBIE recommends that:

- a. On the basis of the provisional findings on the level of dumping and the consequent material injury caused to the domestic industry, that the Minister should give a provisional direction to impose duties on HSS imported from Malaysia in order to prevent material injury being caused by dumped imports during the remaining period of investigation.
- b. On the basis of the provisional finding that HSS imported from China is not dumped, that the Minister should agree to not make a provisional direction to impose duties on HSS imported from China.

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July 2018